

**TITLE 16 – COUNCIL PUBLIC HEARING 02/22/10 – w/SHORELAND – PART 2**

**NOTE: INTERNAL CHAPTER, ARTICLE, AND SECTION REFERENCES HAVE NOT BEEN REVISED**

**Chapter 16.85**

**DESIGN AND PERFORMANCE STANDARDS - NATURAL ENVIRONMENT**

**Article I. Environmental**

**16.85.1.1      Agriculture.**

A. Agricultural practices must be conducted to minimize soil erosion, sedimentation, contamination, and nutrient enrichment of ground and surface waters.

B. All spreading or disposal of manure must be accomplished in conformance with the Manure Utilization Guidelines, November 1, 2001, published by the Maine Department of Agriculture and the Nutrient Management Law (7 M.R.S. §4201-4209).

C. Manure must not be stored or stockpiled within one hundred (100) feet, horizontal distance, of the normal high-water line of any water bodies, tributary streams, coastal wetlands or freshwater wetlands shown on the Map. Within five (5) years of the effective date of this Chapter all manure storage areas within the Shoreland Overlay and Resource Protection Overlay Zones must be constructed or modified so the facility produces no discharge of effluent or contaminated stormwater. Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the above five-year period.

D. Owner's of agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, or the spreading, disposal or storage of manure within the Shoreland Overlay Zone are required to submit a soil and water conservation plan to the Planning Board for review and approval. Nonconformance with the provisions of said approved plan will be considered to be a violation of this Section.

E. New tilling of soil within one hundred (100) feet, horizontal distance, of the normal high-water line of water bodies or coastal wetlands, within twenty-five (25) feet, horizontal distance of the normal high water line of tributary streams, and freshwater wetlands shown on the Map, is prohibited. Operations in existence on the effective date of this Chapter and not in conformance with this provision may be maintained.

F. After the effective date of this section, newly-established livestock grazing areas will not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of any water bodies, or coastal wetlands or, within twenty-five (25) feet, horizontal distance, of the normal high-water line of tributary streams, and freshwater wetlands shown on the Zoning Map. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provision may continue, provided that such grazing is conducted in accordance with a soil and water conservation plan that has been approved by the Planning Board.

**16.85.1.2      Mineral/Earth material exploration and removal.**

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A. Topsoil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this title, only after a special permit for such operations has been issued by the code enforcement officer upon approval and review of plans by the planning board in accordance with the provisions of this title, and provided that nothing herein may be deemed to apply to normal excavation operations incidental to construction activities for which a valid permit is held. The following standards must be met:

1. The applicant must submit to the code enforcement officer plans of the proposed extraction site showing the property lines and names of all abutting owners and ways, indicating by not greater than five-foot contour intervals related to U. S. Geodetic Survey data, the location and slope of the grades existing and as proposed upon completion of the extraction operation, proposed fencing, buffer strips, signs, lighting, parking and loading areas, entrances and exits, together with a written statement of the proposed method, regularity, working hours and total proposed rehabilitation and restoration of the site upon completion of the operation.

2. Said plans and statement are to be promptly submitted with the recommendations of the code enforcement officer to the planning board for its consideration with respect to the effect of the proposed operation upon existing and foreseeable traffic patterns within the town, upon existing or approved land uses which might be affected by the operations. The planning board may recommend changes to the applicant for resubmission to the planning board. The planning board is to promptly call and hold a public hearing upon the final application in the same manner as provided for any final plan review.

3. The planning board shall render a written decision as to whether, and under what conditions, the proposed operation may be permitted consistent with public health and safety, the preservation of attractive natural features, compatibility, despite temporary and reasonable disturbance, with existing or approved land uses which might be affected, and implementation of the comprehensive plan. If the planning board approves the application, it may condition the special permit upon such alterations in the proposed operation or upon the performance or omission of such acts, as it may deem proper to assure attainment of the objectives set forth in the preceding sentence, and it may require filing of a performance guaranty in an amount and form acceptable to the town manager to indemnify the town against any claims arising from the proposed operations, and to assure satisfactory performance of all conditions imposed or otherwise applicable.

B. Mandatory Restrictions. All extraction operations and sites within the town must be conducted and maintained in accordance with, and the planning board shall impose, such conditions upon any special permit issued under this subsection as they deem necessary or desirable to assure compliance with, the following requirements:

1. Mineral exploration to determine the nature or extent of mineral resources must be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer is required for mineral exploration which exceeds the above limitation. All

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excavations, including test pits and holes must immediately be capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.

2. Mineral extraction, including sand and gravel extraction, is prohibited within the Conservation, Shoreland Overlay and Resource Protection Overlay Zones.

3. No part of any extraction operation may be permitted within one hundred (100) feet of any property or street line, and natural vegetation must be left and maintained on the undisturbed land. Minimize the volume of earth cut and fill, in general with no cut or fill greater than seven feet for construction in an urban residential zone. Topographical change will not result in cuts or fills exceeding seven feet.

4. No standing water may be permitted in any extraction site during or after extraction operations, except that during or after extraction operations standing water may be permitted under strict conditions with respect to fencing, safe levels of coliform bacteria count, and treatment to prevent breeding of insects so as to assure the public health and safety as determined by the town health officer.

5. No slopes steeper than three feet horizontal to one foot vertical may be permitted at any extraction site unless a fence at least three feet high is erected to limit access to such locations.

6. Before commencing removal of any earth materials, the owner or operator of the extraction site must present evidence to the planning board of insurance against liability arising from the proposed extraction operations, and maintain such insurance throughout the period of operation.

7. Any topsoil and subsoil suitable for purposes of revegetation must, to the extent required for restoration, be stripped from the locations of extraction operations and stockpiled for use in restoring the location after extraction operations have ceased.

8. Upon completion of active extraction operations, the land must be left so that natural storm drainage and watercourses leave the location at the original natural drainage points and in a manner such that the amount of drainage at any point is not significantly increased.

9. The hours of operation at any extraction site are to be limited as the planning board deems advisable to ensure operational compatibility with residents of the town.

10. Loaded vehicles must be suitably covered to prevent dust and contents from spilling or blowing from the load, and all trucking routes and methods are subject to approval by the chief of police.

11. All access roads leading from the extraction site to public ways must be treated with stone, calcium or other suitable materials to reduce dust and mud for a distance of at least one hundred (100) feet from such public ways.

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12. No equipment, debris, junk or other material is permitted at an extraction site except those directly relating to active extraction operations, and any temporary shelters or buildings erected for such operations and equipment used in connection therewith must be removed within thirty (30) days following completion of active extraction operations.

13. Following the completion of extraction operations at any extraction site or at any one or more locations within any extraction site, ground levels and grades must be established in accordance with the approved plans filed with the Planning Board; all debris, stumps, boulders and similar materials must be removed and disposed of in an approved location or, in the case of inorganic material, buried and covered with a minimum of two feet of soil. Sufficient topsoil or loam must be retained to cover all disturbed areas, so that they must be revegetated and properly restored to a stable condition adequate to meet the provisions of the “Maine Erosion & Sediment Control BMPs,” March 2003.

C. Issuance and Renewal of Permits. Special permits may be issued in accordance with the foregoing provisions for a period not to exceed one year, and they are renewable only upon application by the owner, after a finding by the planning board that the conduct of the operation has been substantially in accordance with any and all conditions imposed or material representations made in connection with the original special permit; and upon such additional and altered conditions as the board may deem necessary in accordance with subsection (A)(3) of this section.

**16.85.1.3 Prevention of erosion.**

A. No person may perform any act or use the land in a manner which would cause substantial or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in the town. This does not affect any extractive operations complying with the standards of performance specified elsewhere in this title.

B. All development must generally comply with the provisions of the “Environmental Quality Handbook Erosion and Sediment Control” published by the Maine Soil and Water Conservation Commission. Special consideration will be given to the following:

1. Select a site with the right soil properties, including natural drainage and topography, for the intended use;

2. Utilize for open space uses those areas with soil unsuitable for construction;

3. Preserve trees and other vegetation wherever possible;

4. Hold lot grading to a minimum by fitting the development to the natural contour of the land, avoid substantial areas of excessive grade;

5. Spread jute matting, straw or other suitable material during construction in critical areas subject to erosion;

6. Construct sediment basins to trap sediment from runoff waters during development. Expose as small an area of subsoil as possible at any one time during development and for as short a period as possible;

7. Provide for disposing of increased runoff caused by changed land formation, paving and construction, and for avoiding sedimentation of runoff channels on or off the site;

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8. Plant permanent, and where applicable indigenous, vegetation and install structures as soon as possible for the purpose of soil stabilization and revegetation;

9. All logging or woodlot roads must be located, constructed and maintained in conformance with the erosion prevention provisions of “Permanent Logging Roads for Better Woodlot Management,” published by the U.S. Department of Agriculture.

C. Where the board has required a stormwater management and erosion control plan, said plan shall be endorsed by the York County soil and water conservation district.

D. All activities which involve filling, grading, excavation or other similar activities that potentially may result in unstable soil conditions, and which require a permit, must be made known in a written soil erosion and sedimentation control plan in accordance with the “Maine Erosion & Sediment Control Best Management Practices (BMPs)”, March 2003. The plan must be submitted to the permitting authority for approval and must include, where applicable, provisions for:

1. mulching and re-vegetation of disturbed soil;

2. temporary runoff control features such as hay bales, silt fencing or diversion ditches;

3. permanent stabilization structures such as retaining walls or riprap.

E. To create the least potential for erosion, development must be designed to fit with the topography and soil of the site. Areas of steep slopes where high cuts and fills may be required are to be avoided wherever possible, and natural contours must be followed as closely as possible.

F. Erosion and sedimentation control measures apply to all aspects of the proposed project involving land disturbance, and must be in operation during all stages of the activity. The amount of exposed soil at every phase of construction must be minimized to reduce the potential for erosion.

G. Any exposed ground area must be temporarily or permanently stabilized in accordance with the “Maine Erosion & Sediment Control Best Management Practices (BMPs)”, March 2003.

H. Natural and man-made drainage ways and drainage outlets must be protected from erosion from water flowing through them. Drainage ways must be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and be stabilized with vegetation or lined with riprap.

**16.85.1.4 Soil suitability.**

A. The requirements and standards of the State of Maine Department of Environmental Protection, Department of Health and Welfare, the latest edition of the State Plumbing Code and this code must be met.

B. Any proposed subdivision requires a soil survey covering the development. Where the soil survey for York County shows soils with severe restrictions for development, a Class A high

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intensity soils report by an accredited soils scientist, registered in the state of Maine, using the standards of high intensity soil mapping as established by the Society of Soil Scientists of Northern New England must be provided.

C. Lot size determination is be as follows:

1. Areas containing hydric soil may be used to fulfill twenty-five (25) percent of the minimum lot size required by this title, provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all buildings and required utilities such as sewage disposal and water supply (including primary and reserve leach field locations within required zoning setbacks).

2. Lots served by municipal water and sewer may use areas of poorly drained soil to fulfill up to fifty (50) percent of the minimum required lot size.

3. No areas of surface water, wetlands, right-of-way, or easement, including utility easements or areas designated as very poorly drained soil may be used to satisfy minimum lot sizes, except as noted above.

D. If the soil classification is challenged by the applicant, an abutter, a landowner, the CEO, or the Conservation Commission, petition must be made in writing to the planning board. With such petition, or a challenge by the board, the planning board shall determine whether a qualified soil scientist should conduct an on-site investigation and at whose expense. The soil scientist shall present evidence in written form to the planning board, which evidence forms the basis for the board's decision.

E. All land uses must be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, require a soils report based on an on-site investigation and must be prepared by state-certified professionals. Certified persons may include Maine certified soil scientists, Maine registered professional engineers, Maine certified geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report must be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report must include recommendations for a proposed use to counteract soil limitations where any exist.

**16.85.1.5 Water quality and wastewater pollution.**

A. No activity is allowed to deposit on or into the ground or discharge to any river; stream or brook; pond or lake; or wetland any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body.

B. Wastewater to be discharged into Kittery sewer department sewers, should they be available, must be in such quantities and/or of such quality as to be compatible with standards established by the municipality or sewer department.

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C. To meet those standards, the municipality or sewer department may require that such wastes undergo pretreatment or full treatment at the site in order to render them acceptable for the treatment processes.

D. The disposal of wastewater by means other than a public system must comply with the laws of the state of Maine and the town concerning water pollution. Where a public sanitary sewer system is located within two hundred (200) feet of the property line as measured along a public way, the town requires individual entrance into said sewer.

E. Discharge of sanitary wastes to any water body is subject to the issuance of Maine State Department of Environmental Protection licenses, but no such off-site discharge will be allowed unless same is buried or not visible to a point below normal low water, and is secured against damage and uncovering by the tides, erosion or other foreseeable action.

**Article II. Retention of open spaces and natural or historic features.**

**16.85.2.1 Tree clearing.**

Proposed development plans must, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plans.

**16.85.2.2 Clearing or removal of vegetation for uses other than timber harvesting in a Resource Protection Overlay Zone**

A. In a Resource Protection Overlay Zone, cutting of vegetation is prohibited within the strip of land extending one hundred (100) feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in a Resource Protection Overlay Zone the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection Overlay Zone.

B. Except in areas as described in Section 16.32.1065.A. above and one hundred (100) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation must be preserved as follows:

1. Clearance of an opening greater than two hundred and fifty (250) square feet in the forest canopy, or other existing woody vegetation if a forested canopy is not present, as measured from the outer limits of the tree or shrub crown is prohibited. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created

2. Selective cutting of trees within the buffer strip is allowed provided a well-distributed stand of trees and other natural vegetation is maintained. Adjacent to water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

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<u>Diameter of Tree at 4- ½ feet Above Ground Level (inches)</u>	<u>Points</u>
<u>2 - &lt; 4 in.</u>	<u>1</u>
<u>4 – &lt;8 in.</u>	<u>2</u>
<u>8-&lt; 12 in.</u>	<u>4</u>
<u>12 in. or greater</u>	<u>8</u>

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The following governs in applying this point system:

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(i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

(ii) Each successive plot must be adjacent to, but not overlap a previous plot;

(iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Code;

(iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Code;

(v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

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3. For the purposes of Section 16. 32.1065.B.2 “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter may be removed until 5 saplings have been recruited into the plot.

3. Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4½ feet above ground level may be removed in any ten (10) year period.

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a. To protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, must remain uncut, uncovered, or undisturbed, except to provide for a footpath or other permitted uses as described in Section 16.32.1065 B. above.

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b. Pruning of tree branches, on the bottom 1/3 of the tree is allowed.

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c. To maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings must be replanted with tree species that are suitable to Kittery’s growing conditions unless existing new tree growth is present. See Design Handbook Kittery Maine, approved by the Kittery Planning Board, August 11, 2005, pages 13 and 14 for the listing of approved plant materials.



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d. Section 16.32.1065. does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

C. At distances greater than one hundred (100) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, the upland edge of a coastal wetland, and one hundred (100) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there will be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4½ feet above ground level. Tree removal in conjunction with the development of permitted uses must be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area. It is not permissible to clear openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceeding in the aggregate, 25 percent of the lot area within the Shoreland Overlay Zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision does not apply to the General Development or the Commercial Fisheries/Maritime Activities zones.

D. Legally existing nonconforming cleared openings may be maintained, but must not be enlarged, except as allowed by this Code.

E. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation will be regulated under the provisions of Section 16.32.

**16.85.2.3 Protected land boundary markers.**

Boundaries of protected land areas must be permanently marked using Town environmental boundary markers. The five boundary markers are: (1) Conservation Land, (2) Protected Wetland, (3) Protected Vernal Pool, (4) Wildlife Habitat, and (5) Wetlands. Depending on the proposed development the required markers(s), number of markers, placement and spacing, and the method of mounting, must be indicated on the approved final plan.

**16.85.2.4 Dedication.**

Reserved land acceptable to the Planning Board and applicant may be gifted to the municipality as a condition of approval, only when Council has agreed to the gifting.

**16.85.2.5 Payment in-lieu of dedication.**

Section 16.34.470, Mitigation sets forth criteria for a wetland alteration. See Appendix N, Wetland Preservation Fee when the proposed development plan(s) involves the preservation and/or restoration of a wetland.

**16.85.2.6 Landscape plan for preservation of natural and historic features.**

The applicant is required to submit a proposed development design plan(s) that includes a landscape plan showing the preservation of existing trees ten (10) inches or more, caliper at breast height; the replacement of trees and vegetation; graded contours; streams, wetlands and water bodies and the preservation of scenic, historic or environmentally significant areas. Cutting

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of trees on the northerly borders of lots should be avoided as far as possible, to provide a natural wind buffer. Unless the applicant can demonstrate it is impracticable, street and lot layout must be adapted to the topography. Extensive grading and filling must be avoided as much as possible.

**16.85.2.7 Archaeological or historic sites.**

A. When the proposed development contains any identified archaeological or historic sites, or any areas identified by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas must be included in the open space, and suitably protected by appropriate covenants and management plans.

B. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places, must be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least twenty (20) days prior to action being taken by the Code Enforcement Officer and or the Planning Board. The development review authority will consider comments received from the Commission prior to rendering a decision on the application.

C. In a Shoreland, Resource Protection or Commercial Fisheries/Maritime Uses Overlay Zone, a permit is not required for an archaeological excavation provided the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

**Article III. Conservation of Wetlands Including Vernal Pools**

**16.85.3.1 Purpose.**

A. Wetlands are a fragile natural resource which, in their natural state, directly and indirectly benefit the public by serving valuable functions such as pollution filtration systems (i.e., retention of suspended solids, phosphorus and other nutrients), control of flood waters, erosion control, groundwater recharge, educational and scientific study, wildlife habitat, open space, and recreation. Considerable wetland acreage has been lost or impaired by draining, dredging, filling, excavating, building, pollution, and other acts inconsistent with the valuable functions and natural limitations of wetlands. It is therefore the intent of the town to:

1. prevent the development of structures and land uses within wetlands and wetland setback areas that may contribute to the pollution of surface and groundwater by sewage or toxic substances;
2. prevent the destruction of, or significant changes to, wetlands which provide flood and shoreline protection, recharge groundwater supplies, and augment stream flow during dry periods;
3. protect wetland areas and promote healthy wetland buffers that will preserve and enhance the wetlands;

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4. protect wildlife habitats, such as vernal pools, deer habitat, nesting sites, etc. and maintain ecological balances;

5. establish maintenance responsibility and/or fees to protect and maintain the wetland areas.

B. The number of healthy, functional wetlands in Kittery is decreasing; therefore practices and strategies, such as buffering and the avoidance of wetland alterations that serve to protect functional wetlands, and the repair of degraded wetlands, are encouraged. The reviewing authority, will review plans for proposed development within 100 feet of a wetland to determine if wetlands of special significance are impacted. The applicant may be required to pay the cost of an independent study. For the reviewing authorities refer to the following ordinance sections:

Section 16.28.260 – In general Article VI - Site Review Thresholds,

Section 16.32.020 - Code Enforcement Officer review authority,

Section 16.36.020.D – Advisory opinions, and

Section 16.36.030. B – Employment of Consultant for Application Review and Inspections.

Wetlands of special significance have one or more of the following characteristics:

1. Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is critically imperiled as defined by the Maine Natural Areas Program.

2. Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat as defined by 38 M.R.S.§480-B(10).

3. Location near coastal wetland. The freshwater wetland is located within 250 feet of a coastal wetland.

4. Location near a water body. The freshwater wetland is located within 250 feet of the normal high water line, and within the same watershed, of a lake or pond.

5. Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland contains under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, unless the 20,000 or more square foot area is the result of an artificial pond or impoundment.

6. Wetlands subject to flooding. The freshwater wetland is inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information.

7. Peatlands. The freshwater wetland is or contains peatlands, except that the Planning Board may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance.

8. River, stream or brook. The freshwater wetland is located within 25 feet of a river, stream or brook.

9. Monetary Value. An estimation can be determined based on the importance of the wetland with respect to the individual or collective functions it provides.

10. Vernal Pools. The wetland contains a particular aquatic habitat as defined by Maine Department of Environmental Protection (MDEP) including those mapped as significant vernal pools by MDEP.

**16. 85.3.2 Wetlands boundaries.**

The definition of wetland boundaries is as described in this Section and in Section 16.08.020. Planning board approval to alter a wetland area one acre or larger in size will not be issued until the applicant has submitted to the town a wetlands delineation map and summary prepared by a qualified wetlands scientist or a Maine certified soil scientist, at the applicant's expense. The qualified wetlands

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scientist or Maine certified soil scientist must determine through field investigation the presence, location and configuration of wetlands on the area proposed for use.

A. Disturbed Areas. An area which has been disturbed or modified such that natural vegetation, hydrology or soils are altered or removed may still satisfy the wetland criteria. In the event disturbance of a wetland causes the wetland boundary to be altered, a new boundary may need to be delineated in order to determine if the wetland is a regulated wetland. Wetland boundaries are to be delineated according to procedures described in the Corps of Engineers Wetlands Delineation Manual - Waterways Experiment Station Technical Report Y-87-1, January 1987", (1987 Manual). Notwithstanding the above, areas legally disturbed or modified prior to May 13, 1987 will be considered "wetlands" for the purpose of this title if such disturbed areas currently meet the normal criteria for delineating undisturbed wetlands.

B. Settling Disputes Over Wetland Boundaries. If there is a dispute regarding the existence or boundaries of the wetlands, the boundaries of the wetland are to be determined, at the expense of the applicant, by a qualified wetlands scientist or a qualified Maine certified soils scientist agreeable to both the Planning Board and the applicant.

C. Permits Required from Other Agencies. The determination of wetlands boundaries for town jurisdiction by the town planning board, the conservation commission, or the code enforcement officer does not eliminate the need for the applicant to seek jurisdictional determinations and/or permits from the Maine Department of Environmental Protection and the US Army Corps of Engineers when required.

**16.85.3.3 Regulated activities.**

Unless otherwise specified, all new structures and activities within wetlands, including but not limited to dredging and filling, and expansions of existing structures and activities are subject to the provisions of these regulations. Proposed activities and structures within freshwater wetlands that are smaller than five hundred and one ( 501) square feet in total size are exempt from the regulations in this Article.

**16.85.3.4 Permitted activities.**

The following uses are considered to be compatible within regulated wetlands and are permitted within regulated wetlands without planning board approval provided they are in conformance with all local, federal, state and town regulations:

A. Agriculture, including pasturing, farming, haying, and harvesting of wild crops. Such agriculture must not cause or contribute to surface or groundwater pollution by use of pesticides, toxic chemicals or other pollutants, and must not cause soil erosion;

B. Conservation areas and nature trails;

C. Education and scientific research;

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D. Forestry, tree farming and timber harvesting using the Best Management Practices in order to protect streams from damage and prevent sedimentation. Timber harvesting must be conducted during periods when the ground is frozen. The practice known as “clear cutting” is not permitted by right and requires a special permit under Section 16.28.430;

E. Low intensity recreation;

F. Repair and maintenance of existing ways, roads, driveways, railroad beds, wharfs, docks or utilities. Such repair and maintenance must not negatively impact the wetland, or alter the existing watercourse and related hydrology. ;

G. Repair and maintenance of existing permanent structures requiring the addition or removal of ten (10) cubic yards or less of earth material to (from) a water body or wetland;

H. Placement of drainage outfall pipes requiring the addition or removal of less than ten (10) cubic yards of material;

I. Repair in kind, maintenance and necessary upgrade of existing drainage facilities;

J. Repair in kind and maintenance of existing transportation facilities;

K. Placement of moorings, subject to harbor master approval;

L. Wilderness areas and natural wildlife refuges;

M. Piers, fences, blinds, footbridges, and shelters to enhance wildlife provided they do not involve draining, grading, filling or dredging within the wetland. All such structures must be constructed of nontoxic materials and designed in such a manner to permit the unobstructed flow of waters and must preserve the natural contour and hydrology of the wetland, unless otherwise authorized by special permit as per Section 16.28.430;

N. Emergency public safety operations;

O. Any other activity as determined by the planning board that does not result in a measurable alteration of the wetland.

**16.85.3.5 Prohibited uses within regulated wetlands.**

The following structures and activities are considered to be incompatible with protecting wetlands and are prohibited within regulated wetlands:

A. Disposal or storage of waste and/or hazardous materials;

B. Manure stockpiles;

C. Road salt stockpiles;

D. Topsoil removal except as permitted in Section 16.28.410 or with planning board approval;

E. Bulk fuel storage;

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F. Herbicidal spraying;

G. Invasive non-native wetland plants; and

H. Snow dumping.

**16.85.3.6 Procedures for the wetlands alteration application.**

A. Application and Review Process. The application and review process for the review of proposals within regulated wetlands must conform to the procedures explained in Chapter 16.36, except where specifically stated otherwise in this section.

B. Submission Requirements. An application to alter a wetland must be made in accordance with the submission requirements in Section 16.28.500 to the town planner, or designee as determined by the town manager, accompanied by a fee as determined in Appendix N.

C. Advisory Opinion. The planning board may request the town planner to acquire more specific data and analysis from qualified sources and/or the opinion of the conservation commission concerning the proposed activity.

D. Timing After Board Acceptance. The planning board will issue its decision within thirty-five (35) days of receipt of the completed wetlands alteration application, unless a public hearing is necessary. A hearing is not necessary if the planning board finds that the activity is so minor that it will not significantly affect the wetland, or that the hearing will not produce additional information useful to the review. A decision may be rendered at the scheduling hearing if the board determines that a complete application has been received and no public hearing is necessary.-If a public hearing is held, the planning board is required to issue its decision within thirty-five (35) days of completion of the public hearing.

E. Abutter Notice. Owners of property within one hundred fifty (150) feet, horizontal distance, of the proposed alteration must be notified by first class U.S. mail of any public hearing on the application for wetlands alteration.

F. Coordination. Submission requirements for an application for a wetlands alteration will be integrated into the required submissions for a subdivision or development review application to the planning board.

**16.85.3.7 Review criteria for approval of a wetlands alteration.**

In making the final determination as to whether a wetland application should be approved, the planning board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed. Preference will be given to activities that meet wetland setbacks, have a reasonable stormwater management plan (subject to planning board review and approval), and that dedicate easements for the purposes of maintaining the wetland and the associated drainage system. Approval to alter a wetland will not be granted for dredging or ditching solely for the purpose of draining wetlands and creating dry buildable land areas. An application for a wetlands alteration will not be approved for the purpose of creating a sedimentation or retention basin

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in the wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed.

It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this title and the specific standards listed below to gain planning board approval to alter a wetland. The planning board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with the ordinance.

In evaluating the proposed activity, the planning board may need to acquire expert advisory opinions. The applicant must be notified in writing, by the town planner at the planning board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The planning board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.

When the planning board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the planning board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan, (see Section 16.28.470) and not prior to the completion of all performance guaranties for the project, (see Section 16.32.700).

A. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland. In determining if no practicable alternative exists, the board will consider the following:

The proposed use:

1. utilizes, manages or expands one or more other areas of the site that will avoid or reduce the wetland impact;

2. reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;

3. provides alternative project designs, such as cluster development, roof gardens, bridges, etc., that avoid or lessen the wetland impact; and

4. demonstrates that the proposed development meets or exceeds best management practices for stormwater management in the wetland areas.

B. In determining if the proposed development plan affects no more wetland than is necessary, the board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives:

The proposed use will not

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1. unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release stormwater and surface water runoff;
2. unreasonably increase the flow of surface waters through the wetland;
3. result in a measurable increase in the discharge of surface waters from the wetland;
4. unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;
5. result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;
6. result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands.
7. result in a measurable alteration or destruction of a vernal pool.

**16.85.3.8 Expiration of wetlands alteration approval**

If work on the development has not commenced within one year or is not substantially complete within two years of the approval date, the approval for work in the wetlands will expire. The board may, by formal action, grant extensions to the approval provided the request is submitted to the board prior to the expiration of approval.

**16.85.3.9 Mitigation plan.**

A. Mitigation activities are actions taken to offset potential adverse environmental impact, as well as the remittance of fees and a plan for the preservation of buildable/useable upland areas when the applicant has proven to the planning board's satisfaction that there are no practical alternatives to impacting a wetland.

B. Required Fees and Compensation.

1. For activities which in total will alter or fill less than five hundred and one ( 501) square feet of regulated wetlands, the mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered.

2. For activities which in total alter or fill five hundred and one (501) square feet to twenty thousand (20,000) square feet of wetlands the mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered. The undisturbed buffer zone from the wetland boundary must be placed in deed restrictions and be located and configured in a manner acceptable to the planning board.

3. In addition, a Wetlands Preservation Fee for each square foot of altered wetland area, as determined in Appendix N, Wetlands Preservation account of the town to achieve one or more the following objectives related to the conservation of Kittery wetlands, with the planning board's recommendation and release of funds by the town council:

- a. Restoration and preservation of wetlands;
- b. Purchase of buffer areas for wetlands deemed at risk;



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- c. Monitoring and improvement of water quality;
- d. Environmental and conservation projects such as, but not limited to, education;
- e. Matching grant funds;
- f. Open space land purchases in conjunction with the Open Space Committee;
- g. Assistance to the Kittery Land Trust; h. Purchase of signage to denote sensitive and wetland areas.

4. Assessment. A functional assessment and report of the wetlands to be altered must be conducted in accordance with the requirements in subsection 16.28.500.C. The assessment must demonstrate the existing wetland functions and functional value, and summarize the impairments, degradation, and/or loss of function due to the proposed development.

a. When Required. Fees for deposit to the wetlands preservation account are required whenever wetland areas or wetland functions will be lost or degraded due to the project, as identified by the functional assessment.

b. Where Required. Fees for deposit to the wetlands preservation account must be used on the proposed site or on parcels adjacent to the project site when possible. If not possible, the fees must be used within the same watershed as the proposed alteration, or within the project vicinity, except as allowed for mitigation banking approved in writing by the Maine Department of Environmental Protection. In all cases, use of the fees must occur within the boundaries of the town.

c. Wetland Impact Mitigation Process. Fees or developable land or a combination thereof as determined by the planning board will be used to replace lost wetlands and wetland functions. Where the Maine Department of Environmental Protection and the Kittery ordinance requires, and the planning board has approved a mitigation plan, such plan is deemed to satisfy town standards.

5. Homeowner Association documents, deed covenants, maintenance agreements, and easements must establish responsibility for the maintenance of wetlands. The Association documents must stipulate periodic maintenance of the surface and sub-surface stormwater system including but not limited to catch basins, stormwater manholes, pipes, ditches, curbs, settling basins and other structures designed to direct, retain and or discharge stormwater runoff. In the event the code enforcement officer and /or the Town's engineer finds the wetlands are not in a natural healthy state, the Association will be required to hire a qualified wetlands scientist or a Maine Certified Soils Scientists to evaluate all wetlands within the development at the Association's expense.

**16.85.3.12 Coordination.**

To reduce delays, the applicant may upon written notice to the town planner, simultaneously apply to the Army Corps of Engineers and the Maine Department of Environmental Protection for permits during the town review process. In addition, the applicant may simultaneously apply for other local land use regulation approvals while applying for wetlands alteration approval.

**16.85.3.13 Enforcement.**

Enforcement of the provisions of this article is in accordance with Chapter 16.16, Administration and Enforcement. The Kittery conservation commission (KCC) is empowered to deny a wetlands permit for the applicant's failure to meet the requirements of Article XII of the Kittery land use and

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development code zoning ordinance; to submit necessary information and plans requested by the KCC; to meet the design specifications; performance standards; and to avoid or prevent unacceptable significant or cumulative affects upon the wetland resource areas or interests protected by the Kittery land use and zoning ordinances; or where it finds that no conditions are adequate to protect such values and interests.

**16.85.3.14 Submission requirements for a wetlands alteration application.**

A. Minimum requirements. Unless specifically waived by the planning board, all applications must contain the following information:

1. Thirteen (13) copies of the narrative, the site plan and the vicinity map required in this subsection;

2. A copy of the official documents showing legal interest of the applicant in the property to be affected;

3. A narrative describing:

a. The purpose of the project,

b. The type of alteration to the wetland (fill, culvert, dredge, etc.),

c. Why there is no practicable alternative to impacting the wetland, and

d. How the proposed activity has been designed to minimize the impact on the wetland;

4. A plan view showing the site as viewed from above is required. The plan view must:

a. be drawn at an appropriate scale, but no smaller scale than one inch equals one hundred (100) feet and show the proposed activity, the location and size of all existing and proposed structures, roads, parking areas, and sewage treatment facilities,

b. contain a title block in the lower right-hand corner. The block must contain the :

i. name(s) and address(es) of the applicant or owner,

ii. name and address of the preparer of the plan, with professional seal, if applicable,

iii. name of plan, date of plan preparation, and a revision number and date, if applicable and,

iv. map and lot number(s) according to Kittery tax maps shown in the lower right-hand corner in bold lettering and ¼ inches high.

c. show a north arrow,

d. show property boundaries,

e. show the location of any wetlands, shorelines and flood plains. Wetland boundaries must be delineated using the Corps of Engineers Wetlands Delineation Manual - Waterways Experiment Station Technical Report Y-87-1, January 1987", (1987 Manual),

f. show the location (tied by measurement to identifiable structures or boundary points) of all proposed draining, fill, grading, dredging, and vegetation removal, including specification of amount of materials to be added or removed and procedures to be used,

g. indicate the square footage of wetlands to be affected by the proposed activity,

h. show the direction of natural water flow over the land, in the wetland, and in the proposed alteration area,

i. show the location of the one hundred (100) year floodway and flood hazard boundaries as shown on the current effective National Flood Insurance Program maps, if applicable,

j. specify the number of cubic yards, and type of material to be used as fill, if fill material is involved,

k. specify the type of material, number of cubic yards, method of handling, and the location of fill and spoil disposal area, if dredge material is involved, and

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1. show all owners of property within one hundred fifty (150) feet of the proposed alteration together with their mailing addresses and map and lot designations from the assessor's records.
5. A vicinity map utilizing a topographic map at a scale no smaller than one inch equals 600 feet showing the boundary of the proposed activity.;
6. One set of photographs, taken during the growing season if possible, showing the wetland, adjacent water bodies if applicable, and the alteration area before development begins.
- B. Additional Requirements. In its consideration of an application, the board may at any point in the review, require the applicant to submit additional materials, studies, analyses, and agreement proposals that the board may deem necessary for a complete understanding of the application. Such material may include the following items:
1. a site plan showing existing and proposed topographic contours at two-foot intervals;
2. a hydrologic analysis in accordance with the requirements of Article IX of Chapter 16.32;
3. cross-section drawings showing the nature of the construction, the depth of excavation or height of fill, if applicable, and surface water and groundwater elevations.
4. An evaluation, by a qualified wetlands scientist or a Maine Certified Soils Scientists, assessing the functions of the wetland and the impact of the proposed activity on these functions.
- C. Wetlands mitigation plan and report. A wetlands mitigation plan and report is required for activities which, in total, affect or fill more than five hundred (500) square feet of wetlands.
1. The wetland mitigation plan and report must contain the following:
- a. a plan at a scale of one inch equals one hundred (100) feet that shows two-foot contour intervals, existing wetland boundaries, the area of wetland to be altered, project dimensions and all offsite wetlands, being extensions of the wetland to be altered;
- b. existing wetland characteristics including water depth, vegetation and fauna;
- c. a functional assessment, conducted by a qualified wetlands scientist or a Maine Certified Soils Scientist, on the wetland to be altered, which analyzes the wetland's value based on the functions it serves and how the wetland will be affected by the proposed alteration. *The Wetland Evaluation Technique* (WET) methodology, published by the U.S. Army Corps of Engineers is one acceptable methodology. Other comparable assessment techniques may be accepted provided the applicant submits documentation of how the methodology was developed, how the wetland functions and values are determined, and how much field testing the technique has undergone; and
- d. photographs of the wetland to be altered which show its characteristics.
2. A description of the overall proposed activity with particular reference to its impact on the wetland, including the precise location of the activity, its dimensions, the amount and type of fill (if any proposed), any proposed drainage, the timing and procedures proposed for the alteration, and any efforts proposed for reducing impacts. The planning board may require certain fill areas (such as storm water storage basins, solid waste landfills, fill behind retaining walls, etc.) to be structurally engineered.
3. A plan for the proposed wetlands work, if any, including a topographic plan at the scale of one inch equals one hundred (100) feet showing two-foot contour intervals and proposed wetland boundaries. This plan must also include:
- a. proposed boundaries and characteristics of the mitigation site, including elevation, sources of water, and proposed vegetation;

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- b. a narrative describing the specific goals in terms of particular wetland functions and values. These goals must be related to those of the original wetland;
- c. a narrative describing the available literature or experience to date (if any) for carrying out the mitigation work;
- d. proposed implementation and management procedures for the wetlands work;
- e. a description of the short-term and long-term sources of water for this wetland, including the water quality of these sources;
- f. plans for re-planting, including a description of plant species, sizes and sources of plant material, as well as how, when and where seeding or planting will take place;
- g. proposed buffers or protective measures such as sediment control methods;
- h. plans for monitoring the wetlands work, showing capability for mid-course corrections; and
- i. plans, if any, for control of non-indigenous plant species.
4. For wetlands work involving creation, restoration and or enhancement of degraded wetlands, a maintenance agreement must be approved by the board and recorded in the York County Registry of Deeds. The maintenance agreement must be conveyed or a deed restriction imposed, and such maintenance responsibility is not dissolvable without council approval. The maintenance agreement must meet, or exceed, the criteria listed in Section 16.28.500.C.3. parts d through i.
5. For projects involving preservation of wetlands or adjacent uplands, a conservation easement must be conveyed or deed restriction imposed so that the parcel will remain undeveloped in perpetuity.

**Article IV. Rules Governing Special Situations for Setbacks**

**16.85.4.1 Setbacks extending beyond publicly accepted streets.**

The required setback distances do not extend beyond the centerline of publicly accepted street that generally parallels the normal high-water line of a water body, tributary stream or the upland edge of a wetland.

**16.85.4.2 Newly-created wetlands and water bodies.**

Setbacks are not required from a wetland or water body created from upland land area provided the newly-created wetland or water body is not part of a required mitigation plan.

A. Wetland setbacks for the zoning district and the shore land overlay district apply.

B. A performance guarantee, such as an escrow or bond, is required to guarantee that new vegetation will survive. Prior to the release or drawdown of funds in such accounts, a written statement from a qualified wetlands scientist that says the vegetation is thriving must be submitted to the Town Manager.

**16.85.4.3 Setbacks from altered wetlands or water bodies.**

The illegal altering of a water body or wetland area, where the surface area of the water body is decreased (lowered), after May 13, 1987 may not be used to change the location from which a setback is measured. The illegal filling of a water body or wetland area, where the normal water

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surface area of the water body is increased (raised), after May 13, 1987 must be measured from the most recent edge of the normal water surface elevation.

Alterations to the wetland boundaries that have been approved by the planning board and are in compliance with regulations of the Army Corps of Engineers and the Maine Department of Environmental Protection, may be constructed per the planning board's approved wetlands alteration plan.

**16.85.4.4 Setbacks for utility poles.**

Setbacks for utility poles must be shown and identified on the development plans. Distances from utility pole structures and the upland edge of wetlands of any type may not have to be set back from the wetland. Such setback distances require planning board approval.

**16.85.4.5 Utilities within a wetland.**

Where it is demonstrated that there is no alternative to avoid utilities within a wetland, the applicant's engineer must provide trench details for depth, distance between pipes, if applicable, fill materials, minimum compaction and or encasement.

A. Rotted material, muck and unsuitable soils must be removed from the trench and replaced with select materials that provide the required compaction, pipe support and protection.

B. Trenches for shallow depth pipes (having less than 4 feet of cover) must be designed to avoid pipe movement that may result in breakage.

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<b>Table 16.85</b>			
<b>Minimum Setbacks from Wetlands and Water Bodies*</b>			
<b>STRUCTURE/ACTIVITY</b>	<b>TOTAL SIZE OF WETLAND AND/OR WATER BODY</b>		
	<b>&lt; 501 square feet</b>	<b>501 square feet—1 acre and Intermittent Streams</b>	<b>&gt; 1 acre</b>
<u>Local distribution utility pole, fence, flagpole, signs or drainage structure</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Functionally water-dependent uses</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b><u>Roads and Driveways</u></b>			
<u>Traveled way of road or driveway of 18 feet or less in width<sup>1</sup></u>	<u>0</u>	<u>10 feet from Toe of slope</u>	<u>10 feet from Toe of slope</u>
<u>Traveled way of road or driveway greater than 18 feet in width<sup>1</sup></u>	<u>0</u>	<u>30 feet or 10 feet from Toe of slope whichever is greater</u>	<u>30 feet or 10 feet from Toe of slope whichever is greater</u>
<b><u>Parking Areas</u></b>			
<u>Parking areas for one- and two-family residential uses</u>	<u>0</u>	<u>10 feet</u>	<u>20 feet</u>
<u>1—5 stall parking area</u>	<u>0</u>	<u>30 feet</u>	<u>50 feet</u>
<u>6—20 stall parking area incorporating BMPs for stormwater management<sup>2</sup></u>	<u>0</u>	<u>40 feet</u>	<u>75 feet</u>
<u>6—20 stall parking area without incorporating BMPs for stormwater management.<sup>2</sup></u>	<u>0</u>	<u>75 feet</u>	<u>100 feet</u>
<u>21+ stall parking area<sup>3</sup> incorporating BMPs for stormwater management</u>	<u>0</u>	<u>50 feet</u>	<u>75 feet</u>

\* All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.

<sup>1</sup> The roadway setback does not serve to negate a wetland crossing project for which a wetlands permit has been approved by the planning board.

<sup>2</sup> Written endorsement by the York County soil and water conservation district (SCS) that Best Management Practices (BMPs) for protecting water quality by minimizing pollutants leaving the site in the stormwater runoff are incorporated to the maximum extent practicable is required to satisfy this condition. The planning board may waive the requirement for written endorsement by the SCS when it finds a drainage plan has adequately protected the wetland from adverse impacts.

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13675 <sup>3</sup> 21+ stall parking areas must incorporate BMPs.

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<b><u>Table 16.85</u></b> <b><u>Minimum Setbacks from Wetlands and Water Bodies*</u></b>			
<b><u>STRUCTURE/ACTIVITY</u></b>	<b><u>TOTAL SIZE OF WETLAND AND/OR WATER BODY</u></b>		
	<b><u>&lt; 501 square feet</u></b>	<b><u>501 square feet—1 acre and Intermittent Streams</u></b>	<b><u>&gt; 1 acre</u></b>
<b><u>Patios, Decks, Accessory Buildings</u></b>			
<u>Patio or deck area no larger than 500 square feet in size</u>	<u>0</u>	<u>30 feet</u>	<u>50 feet</u>
<u>Detached residential storage shed no larger than 120 square feet in size</u>	<u>0</u>	<u>30 feet</u>	<u>50 feet</u>
<b><u>Other Buildings and Structures</u></b>			
<u>Building or structure (including patio or deck area larger than 500 square feet in size)</u>	<u>0</u>	<u>50 feet</u>	<u>100 feet</u>
<u>Activities and structures permitted within regulated wetlands</u>	<u>0</u>	<u>0 feet</u>	<u>0 feet</u>
<b><u>Subsurface Sewage Disposal</u></b>			
<u>Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of less than 2,000 GPD</u>	<u>0</u>	<u>50 feet</u>	<u>100 feet</u>
<u>Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of 2,000 GPD or more</u>	<u>0</u>	<u>100 feet</u>	<u>100 feet</u>
<b><u>Recreational Uses and Structures</u></b>			
<u>Low-intensity recreation</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Recreational facility or structure excluding a golf course</u>	<u>0</u>	<u>50 feet</u>	<u>100 feet</u>
<b><u>Topsoil Removal</u></b>			
<u>Removal of more than 10 cubic yards of topsoil except for approved projects</u>	<u>0</u>	<u>50 feet</u>	<u>100 feet</u>

\* All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.

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<b><u>Table 16.85</u></b> <b><u>Minimum Setbacks from Wetlands and Water Bodies</u></b>			
<b><u>STRUCTURE/ACTIVITY</u></b>	<b><u>TOTAL SIZE OF WETLAND AND/OR WATER BODY</u></b>		
	<b><u>&lt; 501 square feet</u></b>	<b><u>501 square feet—1 acre and Intermittent Streams</u></b>	<b><u>&gt; 1 acre</u></b>
<u>Topsoil removal with a soil conservation service endorsed erosion and sedimentation plan</u>	<u>0</u>	<u>25 feet</u>	<u>25 feet</u>
<b><u>Special Uses</u></b>			
<u>Junkyard<sup>1</sup></u>	<u>0</u>	<u>100 feet</u>	<u>150 feet</u>
<u>Bulk salt storage not in an enclosed structure<sup>1</sup></u>	<u>0</u>	<u>100 feet</u>	<u>150 feet</u>
<u>Gravel and mineral extraction or Processing<sup>1</sup></u>	<u>0</u>	<u>100 feet</u>	<u>150 feet</u>
<u>Storage of hazardous chemicals or special wastes other than amounts normally associated with individual house-holds/farms<sup>1</sup></u>	<u>0</u>	<u>100 feet</u>	<u>150 feet</u>
<u>Commercial painting, wood preserving or furniture stripping<sup>1</sup></u>	<u>0</u>	<u>100 feet</u>	<u>150 feet</u>
<u>Laundromats, auto wash, printing, dry-cleaning, photographic processing if not connected to a sanitary Sewer<sup>4</sup></u>	<u>0</u>	<u>100 feet</u>	<u>150 feet</u>
<u>Metal plating, finishing, polishing<sup>1</sup></u>	<u>0</u>	<u>100 feet</u>	<u>150 feet</u>

\* All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.

<sup>4</sup> Wetland setback may be reduced to 100 feet, if the stormwater management plan is endorsed by the SCS as incorporating BMPs for protecting water quality by minimizing pollutants leaving the site in the stormwater run-off.

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**Article IV Timber Harvesting**

**16.85.4.1 Timber harvesting (As permitted in R-RLC and MU Zones)**

A. Repeal of the Timber Harvesting Regulation.

Subsequent to the establishment of the State of Maine Department of Conservation's Bureau of Forestry Timber Harvesting Standards, the State will commence administration of all timber harvesting within the Shoreland Overlay Zone. Under 38 M.R.S., §438-A(5), the following provisions of this Code will be repealed:

In Section 16.08.020 – Definitions: "forest management activities" and "residual basal area".

B. Timber harvesting must conform with the following provisions:

1. Selective cutting of no more than forty (40) percent of the total volume of trees, four (4) inches or more in diameter, measured at 4½ feet above ground level on any lot in any ten (10) year period is permitted. In addition:

a. –Within seventy-five (75) feet, horizontal distance, of the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland, clearcut openings are prohibited and a well-distributed stand of trees and other vegetation, including existing ground cover, must be maintained.

b. At distances greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of water bodies or the upland edge of a wetland, harvesting operations are limited to single clearcut openings of ten-thousand (10,000) square feet or less in the forest canopy. Where such openings exceed five-thousand (5000) square feet they must be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings must be included in the calculation of total volume removal. For purposes of these standards volume may be considered equivalent to basal area.

2. Timber harvesting operations exceeding the 40% limitation in Section 16.34.1300.B, above, may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Code. The Planning Board is required to notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the Planning Board's decision.

3. No accumulation of slash is to be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash must either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream must be removed.

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- 13729 4. Timber harvesting equipment is prohibited from using stream channels as travel routes except  
13730 when:  
13731 a. Surface waters are frozen; and  
13732 b. The activity will not result in any ground disturbance.  
13733
- 13734 5. All crossings of flowing water require a bridge or culvert, except in areas with low banks and  
13735 channel beds which are composed of gravel, rock or similar hard surface which would not be  
13736 eroded or otherwise damaged.  
13737
- 13738 6. Skid trail approaches to water crossings must be located and designed to prevent water runoff  
13739 from directly entering the water body or tributary stream. Upon completion of timber harvesting,  
13740 temporary bridges and culverts must be removed and areas of exposed soil revegetated.  
13741
- 13742 7. Except for water crossings, skid trails and other sites where the operation of machinery used in  
13743 timber harvesting results in the exposure of mineral soil must be located so an unscarified strip of  
13744 vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10)  
13745 percent must be retained between the exposed mineral soil and the normal high-water line of a  
13746 water body or upland edge of a wetland. For each ten (10) percent increase in slope, the  
13747 unscarified strip must be increased by twenty (20) feet, horizontal distance. The provisions of this  
13748 section apply only to a face sloping toward the water body or wetland, provided, however, that no  
13749 portion of such exposed mineral soil on a back face can be closer than twenty five (25) feet,  
13750 horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

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**Chapter 16.369 DEVELOPMENT PLAN APPLICATION AND REVIEW**

**Sections:**

**~~16.36.010 Purpose.~~**

**~~16.36.020 Application procedure.~~**

**~~16.36.030 Schedule, notice and fees.~~**

**~~16.36.040 Schedules and timing prior to substantive review.~~**

**~~16.36.050 Schedules and timing after board acceptance.~~**

**~~16.36.060 Submission contents.~~**

**~~16.36.070 Review procedures.~~**

**~~16.36.080 Final approval.~~**

**Article I. Purpose**

**16.36.0109.1 General Purpose.**

The purpose of this chapter is to outline the application and review process for development of any type within the town. (~~Land use and dev. code § 59.1, 1994~~)

**Article II Development Plan Review and Approval Process**

**16.9.2.1 General development, site, and subdivision plans review.**

All proposed development including site, subdivision, business use and other development must be reviewed for conformance with the procedures, standards and requirements of this Code by the Planning Board except as provided herein, but in all cases by the Town Planner and Code Enforcement Officer and where required the Board of Appeals as provided herein.

**16.9.2.2 Other development review.**

An applicant or applicant's authorized agent must obtain Planning Board approval in accordance with this title for all developments except the following unless located within the Shoreland or Resource Protection Overlay Zones:

A. Single and duplex family dwellings, except if within either a Shoreland or Resource Protection Overlay Zone, in addition to other criteria specified in Section 16.24.060, applicable to the granting of a special exception use request, the Planning Board must review and may approve a plan or permit for a one to two family residential structure provided the applicant meets all of the applicable Design and Performance Standards.

B. Expansion of existing use where the expanded use will require fewer than six additional parking spaces.

C. Division of land into lots (i.e., two lots) which division is not otherwise subject to planning board review as a subdivision, and on which no buildings will be placed by the applicant.

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D. Business use as provided in section 16.36.070.

**16.9.2.3 Pre-Approval development prohibited.**

The applicant or applicant's authorized agent must obtain final planning board approval before:

A. Any contract, or offer for the conveyance of the proposed development (or portion thereof) has been made;

B. Any subdivision into three or more lots has been recorded in the York County registry of deeds;

C. A building/regulated activity permit for any structure within the development is issued; or

D. Work on any improvements (including installation of roads or utilities or land clearing) has begun.

**16.9.2.4 Shoreland development review.**

All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or replacement of an existing use or structure, or renewal of a discontinued non-conforming use must be reviewed and approved as provided in this title, and tracked as a shoreland development for reporting purposes.

**16.9.2.5 Subdivision plan review by state.**

A proposed subdivision approval must be obtained in writing from the Maine Department of Environmental Protection (DEP) before submitting a final subdivision plan, if a proposed subdivision:

A. occupies a land area in excess of twenty (20) acres; or

B. involves a structure or structures, having in excess of sixty thousand (60,000) square feet of ground area coverage; or

C. requires a license from the DEP under some other regulation such as waste discharge or air quality; or

D. in any other way falls within the jurisdiction of and is subject to review by the DEP.

**16.9.2.6 Business use review.**

All business use including the following must be reviewed by the CEO and town planner to ensure compliance with the requirements of this title including:

A.. Movement of an existing commercial or business entity from like to like facilities/use where major building/site modifications are not made;

B. Movement of an existing commercial or business use into related facility/use buildings;

C. Establishment of new commercial or business entity in an existing facility where intensity of use is not significantly different.

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**16.9.2.7Independent review/inspection consultant review**

A. All development may be reviewed by an independent review/inspection consultant(s) engaged by the code enforcement officer, with the approval of the town manager, after prior notification to and at the expense of the applicant, to assure compliance with all requirements of this code related to public health, safety and welfare and the abatement of nuisances. The estimated costs of such studies must be deposited with the town prior to their undertaking.

**B. Employment Process**

1. The town planner, in addition to the planning board (Section 16.36.060) and code enforcement officer (Section 16.32.020) may require the applicant to pay the cost of an independent consultant or specialist engaged by the town, if required by the town planner and approved by the town manager, to assist with the technical review of applications submitted for new or amended development. The estimated cost of such a review will be deposited in a town escrow account prior to the application review/inspection work being conducted. Remaining funds in the account will be returned to the applicant or, at the applicant's option, used to pay any further costs associated with the project application.

2. Compliance Inspection Fees. The reviewing/inspection consultant, upon direction of the town planner, will be assigned to conduct compliance inspections of the approved new or amended plans to assure compliance with the codes and conditions of approval. Inspection compliance reports will become a part of the applicant's project file and submitted at agreed to intervals based on the required inspection items developed between the town and the developer following town approval. Copies of all inspection reports will be submitted to the town planner, CEO, and project owner or agent. The estimated cost of the compliance inspection will be deposited in a town escrow account prior to the inspection work being conducted. Remaining funds in the account will be returned to the applicant or, at the applicant's option, used to pay any further costs associated with the project application.

3. Records of application review and inspection reports are public records.

4. Determination of the need for application review and/or compliance inspection is made by the town planner, with the oversight of the town manager. The planning board will be advised of such requests as they occur.

5. As part of each request, feedback about the process will be gathered by the reviewing/inspection consultant from the applicant, planning board, and planning department, and made a part of the record.

**16.9.2.8 Independent review applicant funding.**

The Planning board must require an applicant to pay the costs of an independent consultant or specialist whose services the Planning Board may require, at its discretion, to analyze any or all of the application, in the town's interest.

**16.9.2.9Review fee(s)/reimbursements.**

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A. All applications for plan approval for properties which come under this title must be accompanied by a fee as determined by the town council.

B. The applicant must reimburse the Town for all expenses incurred for notifying abutters of the proposed plan and advertising of any public hearing regarding a development.

**16.9.2.10 Review meeting(s) applicant attendance.**

The applicant, or duly authorized representative must attend all board meetings for which the applicant's application has been placed on the agenda. Relief may be given from this requirement by the board chairperson.

**Article III Sketch Plan Application Review and Approval Process**

**16.9.3.1 Review application form.**

Any person requiring development review must submit an application on forms prescribed by the planning board, together with a development plan and such submission contents as may be required in Section 16.36.060. A complete application consists of all the required elements. No more than one application/plan for a piece of property may be under review before the Planning Board. No more than one approved final plan for a piece of property may be in existence.

**16.9.3.2 Sketch Plan Review Phase**

**A. Process - Planning Board Review and Decision**

The Planning Board must within thirty (30) days of sketch plan submission act upon the sketch plan as follows:

1. The Planning Board must determine whether the sketch plan proposal complies with the standards contained herein, and must where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.
2. If the concept is approved, inform subdivision applicants in writing of the contour interval which will be required for the plans; and will classify the sketch plan into one of two categories defined herein, as a minor subdivision or a major subdivision.
3. Any plan may be continued for a total period not to exceed ninety (90) calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the ninetieth day and action completed in accordance with the requirements and timing contained in this title whether the applicant has accomplished the purposes for which continued or not.
4. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

**B. Submittal**

1. The sketch plan must be submitted to the Planning Board at the time of, or prior to, the on-site inspection.

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2. The sketch plan must show in simple form on a topographic map the proposed site, subdivision, landscape architectural or architectural design concept including streets, lots, structures, and other features in relation to existing conditions and municipal land use zone(s) regulations.

3. The sketch may be a free-hand penciled sketch and must include the data listed below.

4. General subdivision information must describe or outline the existing conditions of the site including:

(a) covenants,

(b) high intensity Class “A” soil survey and soil interpretation sheets, and

(c) available community facilities and

(d) utilities

(e) proposed development such as:

(1) number of residential or business lots and/or dwelling units,

(2) typical lot width and depth,

(3) price range,

(4) business areas,

(5) playgrounds, park areas and other public areas,

(6) protective covenants,

(7) utilities and

(8) street improvements.

Non-subdivision development applicants may choose to submit a development sketch plan with design concept at their discretion. Such submissions must comply with all related requirements.

~~16.36.0209.3.3 — Application procedure r appp.~~

~~A. Planner Acceptance. A determination as to whether the town planner shall accept the application shall be based on a review of the application in accordance with the submission contents checklist, filed with the plan, which shall serve to indicate that all elements required under Section 16.36.060 have been received, or letters for waiver of submittal for any nonreceived items are included together~~

~~B. Receipt and Scheduling Hearing. Upon acceptance, the planner shall arrange placement on the board's agenda for a scheduling hearing and issue a dated receipt to the applicant, which shall thereafter be the official time of submission.~~

~~C. Site Inspection. In the course of his/her investigation of the plan, the planner shall make a physical inspection and may make photographic record of the existing conditions on the site.~~

~~D. Advisory Opinions. At any time during his/her investigation, the planner may request an advisory opinion from the board, conservation commission or port authority, on issues related to the application. Where applications are for land within wetland setbacks or the resource protection zone, the conservation commission shall be invited to review and offer recommendations from an environmental protection perspective. The planner shall also make recommendation on the necessity for independent review.~~



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~~E. Planner Analysis. The planner shall conduct an analysis of the application and forward comments to the applicant and the board with a recommendation as to review category (e.g., site, minor/major subdivision).~~

~~F. ZBA Review Encouraged. Where action by the zoning board of appeals will be required, such action shall be encouraged prior to planning board review as indicated in Section 16.24.050(F). (Land use and dev. code § 9.2, 1994)~~

~~~ 16.36.030 Schedule, notice and fees.~~

~~A. Upon determination by the town planner that an application is complete, he/she shall accept it, together with an application fee in the amount set by the Kittery town council. (See Appendix I fee schedule.) No application shall be deemed complete by the planning board until payment of the proper fees.~~

~~B. Employment of Consultant for Application Review and Inspections.~~

~~1. The town planner, in addition to the planning board (Section 16.36.060) and code enforcement officer (Section 16.32.020) authorities, may require the applicant to pay the cost of an independent consultant or specialist employed by the town, if required by the town planner and approved by the town manager, to assist with the technical review of applications submitted for new or amended commercial, industrial, and subdivision development or any developments located in the shoreland zone. The estimated cost of such a review will be deposited in a town escrow account prior to the application review work being undertaken. Remaining funds in the account will be returned to the applicant or, at the applicant's option, used to pay any further costs associated with the project application.~~

~~2. Compliance Inspection Fees. The town reviewing engineer, upon direction of the town planner, will be assigned to undertake compliance inspections of the approved new or amended industrial, commercial, and subdivision plans to assure compliance with the codes and conditions of approval. Inspection compliance reports will become a part of the applicant's project file and submitted at agreed to intervals based on the required inspection items developed between the town and the project developer following town approval. Copies of all inspection reports will be submitted to the town planner, CEO, and project owner or agent. The estimated cost of the compliance inspection will be deposited in a town escrow account prior to the inspection work being undertaken. Remaining funds in the account will be returned to the applicant or, at the applicant's option, used to pay any further costs associated with the project application.~~

~~3. Records of application review and inspection reports are public records and open to public review.~~

~~4. Determination of the need for application review and/or compliance inspection is made by the town planner, with the oversight of the town manager. The planning board will be advised of such referrals as they occur.~~

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- 14012 ~~5. As part of each referral, consumer feedback about the process will be gathered by the~~  
14013 ~~reviewing engineer from the applicant, planning board, and planning department, and made~~  
14014 ~~a part of the record.~~
- 14015 ~~6. The ordinance codified in this section will be reviewed prior to the one-year anniversary~~  
14016 ~~of its effective date, by the planning board with recommendations to the Kittery town~~  
14017 ~~council.~~
- 14018 ~~C. Scheduling Hearing.~~
- 14019 ~~1. At the scheduling hearing, the board shall accept or deny the application in accordance~~  
14020 ~~with the following:~~
- 14021 ~~a. That the applicant(s) have standing by virtue of vested interest (right, title, or interest) in~~  
14022 ~~all properties under consideration in the plan;~~
- 14023 ~~b. That the application is complete in accordance with the requirements of Section~~  
14024 ~~16.36.060 or the board accepts and approves by formal action any requests for~~  
14025 ~~waiver of submission contents.~~
- 14026 ~~2. At the scheduling hearing, if the board accepts the plan, it shall confirm the review~~  
14027 ~~category; determine if any studies/review or analysis is required in accordance with~~  
14028 ~~Section 16.36.060(D); and schedule the date for public hearing. (Ord. 12-05: land use~~  
14029 ~~and dev. code § 9.3, 1994)~~
- 14030
- 14031 **16.36.040 — Schedules and timing prior to substantive review.**
- 14032 ~~A. Public Hearing. An accepted application shall be scheduled for review and public hearing at~~  
14033 ~~the next open date on the planning board agenda, but no earlier than fifteen (15) days and no~~  
14034 ~~later than thirty (30) days from the date of board acceptance.~~
- 14035 ~~— A board accepted application shall be scheduled for review and public hearing at the next~~  
14036 ~~open date on the planning board agenda. In the case of subdivision applications, such public~~  
14037 ~~hearing shall be scheduled no earlier than fifteen (15) days and no later than thirty (30) days~~  
14038 ~~from the date of board acceptance. Public hearings for all other applications shall be~~  
14039 ~~scheduled within thirty-five (35) days from the date of board acceptance. With the~~  
14040 ~~concurrence of the applicant, the deadlines established above may be modified.~~
- 14041 ~~— At the board's discretion, a public hearing may or may not be held for a right-of-way~~  
14042 ~~application.~~
- 14043 ~~B. Public Notice. The town planner shall cause to be placed a public notice of such hearing in a~~  
14044 ~~newspaper of general circulation at least seven and not more than fourteen (14) days prior to~~  
14045 ~~the scheduled hearing date; said notice shall also be posted in at least three prominent public~~  
14046 ~~locations at least ten (10) days prior to the hearing; and, shall be forwarded to the Southern~~  
14047 ~~Maine Regional Planning Commission and to the clerk of Eliot or York, Maine, in the case of a~~  
14048 ~~plan located within five hundred (500) feet of their municipal boundaries, at least ten (10)~~  
14049 ~~days prior to the hearing.~~
- 14050 ~~— The public notice of public hearings for proposed subdivisions shall be published at least~~  
14051 ~~two times in a newspaper of general circulation. The date of the first notice must be at least~~  
14052 ~~seven days before the scheduled hearing date.~~
- 14053 ~~C. Abutter Notice.~~
- 14054 ~~1. The town planner shall cause to be sent notice of the hearing to all abutting landowners,~~  
14055 ~~and abutting lessees, and to the code enforcement officer, the commissioner of public~~

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works, zoning board of appeals, and where applicable, the port authority or conservation commission, at least seven days prior to the scheduled date. Failure of notificants to receive said notice shall not invalidate any board action.

2. In the case of applications for a right-of-way, instead of abutting landowners only the contiguous property owners, including those across a public street, need be notified.

3. WCSF Proposed Actions Notification Requirements. In writing, at least seven days prior to the hearing, to all owners of property that directly abut or are located within one thousand (1,000) feet of any property line of the property for which the permit is requested. Notice shall also be given to any town located within one thousand (1,000) feet of the proposed telecommunications facility. The applicant shall provide this notification and shall present proof of such notification to the town planner. The notification shall include: the name of the applicant, location of the property, a brief description of the project, and a plot plan identifying the proposed site layout in relation to nearby streets and properties. (Ord. 6-98 (part); land use and dev. code § 9.4, 1994)

### **16.36.050 — Schedules and timing after board acceptance.**

#### **A. All Plans.**

1. Within thirty (30) days after acceptance by the board of a subdivision plan, and within thirty-five (35) days after acceptance by the board of other applications, the board shall approve the plan, approve the plan with conditions, disapprove the plan, table the plan, or continue the review to another time/location.

2. Continuation or tabling of a review beyond the thirty (30) day period for subdivision applications, and the thirty-five (35) day period for other applications, must be for good and sufficient reason and be acceptable to both the developer and the board.

3. Failure of the board to act within the thirty (30) day period for an accepted subdivision application, and the thirty-five (35) day period for other board accepted applications, shall constitute disapproval of the plan in which case the applicant may resubmit the plan without payment of an additional application fee.

4. Sketch plans will be acted upon in accordance with Section 16.36.070(B)(2).

B. Preliminary Plan. Within six months after approval/classification of a sketch plan by the board, the developer shall submit an application for approval of a preliminary plan in the form prescribed herein. If the plan is not submitted to the board within six months after classification of the sketch plan the board may refuse to act on the preliminary plan and require resubmission of the sketch plan. All such plans resubmitted shall comply with all normal application requirements.

C. Final Plan. A developer shall, within six months after approval of a preliminary plan, file with the board an application for approval of the final plan in the form prescribed herein. If the final plan is not submitted to the board within six months after the approval of the preliminary plan, the board may refuse to act on the final plan and require resubmission of the preliminary plan. All such plans resubmitted shall comply with all normal application requirements, including payment of fees.

#### **D. Approved Final Subdivision Plans.**

1. An approved subdivision plan shall be filed with the York County registry of deeds within ninety (90) days from date of such approval. Any plan not so filed and recorded is null and void, unless particular circumstances dictate and upon petition, the board grants an extension which shall not exceed two additional ninety (90) day periods.

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~~—— E. Plan Expiration.~~

~~———— 1. A subdivision plan's approval by the board will expire if work on the development has not commenced within one year or is not substantially complete within three years from the date of board approval. The board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed ten (10) years.~~

~~———— 2. A nonsubdivision plan's approval by the board will expire if work on the development is not commenced within one year or substantially complete within two years from the date of board approval. The board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed three years.~~

~~—— F. Uncounted Time. When an approved plan is required to be reviewed/approved by another agency (e.g., DEP, ZBA, KPA) any period the plan is at such an agency or that a plan is continued by the board in accordance with Section 16.36.070(B)(3), from time of submission to time of decision inclusive, verifiable by recorded documentation, shall not be counted as part of the cumulative time periods described in this Section.~~

~~—— G. Requests for Extension. The board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis. (Ord. 9-96 § 6; land use and dev. code § 9.5, 1994)~~

**16.36.060 — Submission contents.**

~~—— A. Sketch Plan.~~

~~———— 1. The sketch plan shall be submitted to the board at the time of, or prior to, the on-site inspection. The sketch plan shall show in simple form on a topographic map the proposed layout of streets, lots, and other features in relation to existing conditions. The sketch may be a free-hand penciled sketch and shall include the data listed below.~~

~~———— 2. General subdivision information shall describe or outline the existing conditions of the site and the proposed development as necessary to supplement the drawing required above. This information shall include data on existing covenants, high intensity Class "A" soil survey and soil interpretation sheets, and available community facilities and utilities; and, information describing the subdivision proposal such as number of residential lots, typical lot width and depth, price range, business areas, playgrounds, park areas and other public areas, proposed protective covenants and proposed utilities and street improvements.~~

~~———— 3. Nonsubdivision development applicants may choose to submit a development sketch at their discretion. Such submissions must comply with all related requirements.~~

~~—— B. Complete Preliminary Plan. A completed application shall include on the plan or attached thereto, the following items, unless the board, by formal action, upon the applicant's written request, waives or defers any requirement(s) for submission.~~

~~———— 1. A minimum of ten (10) paper copies of the plans and all attachments thereto.~~

~~———— 2. Plans shall:~~

~~———— a. Be drawn on a reproducible medium and shall measure no less than eleven (11) inches by seventeen (17) inches and no larger than twenty-four (24) inches by thirty-six (36) inches;~~

~~———— b. Have a scale of the drawings no greater than one inch equals thirty (30) feet for developments under ten (10) acres, and one inch equals fifty (50) feet for all others;~~

~~———— c. Contain a title block in the lower right hand corner. The block shall contain:~~

~~———— i. The name(s) and address(es) of the applicant and owner;~~

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- 14144        ~~\_\_\_\_\_ ii. The name and address of the preparer of the plan, with professional seal, if~~  
14145        ~~applicable,~~  
14146        ~~\_\_\_\_\_ iii. Map and lot number(s) according to Kittery tax maps,~~  
14147        ~~\_\_\_\_\_ iv. Date of plan preparation/revision, and a unique ID number for the plan and any~~  
14148        ~~revisions;~~  
14149        ~~\_\_\_\_\_ d. Show a standard boundary survey conducted by a surveyor licensed in the state of~~  
14150        ~~Maine, in the manner recommended by the State Board of Registration for Land Surveyors;~~  
14151        ~~\_\_\_\_\_ e. Contain an arrow showing true north and the magnetic declination, a graphic scale,~~  
14152        ~~and signature blocks for the owner(s) and members of the board;~~  
14153        ~~\_\_\_\_\_ f. Show the location and description of all structures, including signs, existing or to be~~  
14154        ~~placed on the site, together with floor plans and elevations of principal structures as well as detail of all~~  
14155        ~~structures and accesses located within one hundred (100) feet of the property line;~~  
14156        ~~\_\_\_\_\_ g. Indicate surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to~~  
14157        ~~be disturbed and amount of street frontage;~~  
14158        ~~\_\_\_\_\_ h. Show names and addresses of all owners of record of property abutting the~~  
14159        ~~development, including those across a street;~~  
14160        ~~\_\_\_\_\_ i. Indicate zoning, including zones of abutting properties, if different;~~  
14161        ~~\_\_\_\_\_ j. Show locations of essential physical features such as watercourses, forest cover,~~  
14162        ~~and outcroppings;~~  
14163        ~~\_\_\_\_\_ k. Show the location of existing and proposed utilities, including power, water, sewer,~~  
14164        ~~holding tanks, bridges, culverts and drainage ways;~~  
14165  
14166        ~~\_\_\_\_\_ l. Provide a description of the type and placement of sewage facilities. The location of all~~  
14167                ~~test pits, at least two of which must meet the State of Maine Plumbing Code~~  
14168                ~~requirements, shall be shown;~~  
14169        ~~\_\_\_\_\_ m. Indicate the source of domestic water;~~  
14170        ~~\_\_\_\_\_ n. Show the location of any parks, open space, or conservation easement;~~  
14171        ~~\_\_\_\_\_ o. Provide sufficient information to identify and locate each interior and exterior lot line,~~  
14172                ~~right-of-way, and street alignments;~~  
14173        ~~\_\_\_\_\_ p. Include plans, profiles and typical sections of all roads and other paved ways, including~~  
14174                ~~all relevant data;~~  
14175        ~~\_\_\_\_\_ q. Indicate existing and proposed setbacks;~~  
14176        ~~\_\_\_\_\_ r. Show the location and provide description of all outdoor lighting and signs;~~  
14177        ~~\_\_\_\_\_ s. Indicate the location of any permanently installed machinery likely to cause appreciable~~  
14178                ~~noise at the lot lines;~~  
14179        ~~\_\_\_\_\_ t. Provide description of any raw, finished or waste materials to be stored outside the~~  
14180                ~~buildings, and any stored material of a toxic or hazardous nature;~~  
14181        ~~\_\_\_\_\_ u. Show existing contours and finished grade elevations within the development;~~  
14182        ~~\_\_\_\_\_ v. Indicate the location and dimensions of sidewalks, curbs, driveways, fences, retaining~~  
14183                ~~walls and other artificial features to be installed;~~  
14184        ~~\_\_\_\_\_ w. Indicate where required, landscaping, including size and type of plant material;~~  
14185        ~~\_\_\_\_\_ x. Have a locus map on the plan which shows the property in relation to surrounding~~  
14186                ~~properties, roads and other geographic features and shall include: (1) all the area~~  
14187                ~~within two thousand (2,000) feet of any property line of the development, (2) any~~

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- 14188 smaller area between the tract and all existing streets, provided any part of such a  
14189 street used as part of the perimeter for the locus map is at least five hundred (500)  
14190 feet from any boundary of the proposed development;
- 14191 ——— y. The location of temporary markers adequate to enable the board to readily locate and  
14192 appraise the layout of the development;
- 14193 ——— z. All parcels of land proposed to be dedicated to public use and the conditions of such  
14194 dedication;
- 14195 ——— aa. The location of all natural features or site elements to be preserved.
- 14196 ——— 3. The following supporting documentation shall be provided:
- 14197 ——— a. A copy of the documents showing legal interest of the applicant in the property to be  
14198 developed. Such documents must contain the description upon which the survey  
14199 was based;
- 14200 ——— b. A copy of any encumbrances currently affecting the property, as well as any proposed  
14201 encumbrances;
- 14202 ——— c. Where public water is used, a letter from the water district, indicating that there is  
14203 adequate supply and pressure to be provided to the development;
- 14204 ——— d. A plan for the control of erosion and sedimentation endorsed by the York County soil and  
14205 water conservation district;
- 14206 ——— e. A plan for the disposal of stormwater and other surface drainage prepared by a  
14207 registered professional engineer;
- 14208 ——— f. A copy of the soil survey for York County covering the development. Where the soil  
14209 survey shows soils with severe restrictions for development, a high intensity Class  
14210 "A" soil survey shall be provided;
- 14211 ——— g. An estimate of the amount and type of vehicular traffic that will be generated by the  
14212 development on a daily basis and for peak hours. For developments involving forty  
14213 (40) or more parking spaces or which are projected to generate more than four  
14214 hundred (400) vehicle trips per day, a traffic impact analysis shall be conducted in  
14215 accordance with subsection (E)(2) of this section;
- 14216 ——— h. When sewage disposal is to be accomplished by subsurface disposal, an analysis of test  
14217 pits, prepared by a licensed site evaluator; or, when sewage disposal is to be  
14218 through a public or community system, documentation from the system's owners  
14219 approving the connection and its location; shall be provided;
- 14220 ——— i. If the application involves the construction of more than five thousand (5,000) square feet  
14221 of nonresidential floor area, or the creation of more than twenty thousand (20,000)  
14222 square feet of impervious area, or the creation of three or more dwelling units in a  
14223 building, a lighting plan, prepared by a qualified lighting professional, showing at  
14224 least the following at the same scale as the site plan:
- 14225 ——— i. The location of all buildings, parking areas, driveways, service areas, pedestrian areas,  
14226 landscaping, and proposed exterior lighting fixtures;
- 14227 ——— ii. Specifications and illustrations of all proposed lighting fixtures including photometric data,  
14228 designation as "cut-off" fixtures, color rendering index (CRI) of all lamps (bulbs),  
14229 and other descriptive information on the fixtures;
- 14230 ——— iii. The proposed mounting height of all exterior lighting fixtures;

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- 14231 ~~iv. Analyses and illuminance level diagrams or photometric point by point diagrams on a~~  
14232 ~~twenty (20) foot grid showing that the proposed installation conforms to the~~  
14233 ~~lighting level standards of the ordinance codified in this section together with~~  
14234 ~~statistical summaries documenting the average illuminance, maximum~~  
14235 ~~illuminance, minimum illuminance, average to minimum uniformity ratio, and~~  
14236 ~~maximum to minimum uniformity ratio for each parking area, drive, canopy, and~~  
14237 ~~sales or storage area;~~  
14238 ~~v. Drawings of all relevant building elevations showing the fixtures, the portions of the walls~~  
14239 ~~to be illuminated, the illuminance levels of the walls, and the aiming points for~~  
14240 ~~any remote light fixtures; and~~  
14241 ~~vi. A narrative that describes the hierarchy of site lighting and how the lighting will be used~~  
14242 ~~to provide safety, security, and aesthetic effects.~~  
14243 ~~4. Such additional submissions as may be required by other sections of this title such as~~  
14244 ~~for clustered development, mobilehome parks, junkyards, or subsection D of this~~  
14245 ~~section, shall be provided.~~  
14246 ~~5. Letters of evaluation of the development by the chief of police, fire chief, commissioner of~~  
14247 ~~public works, and, for residential applications, the superintendent of schools, shall be~~  
14248 ~~collected and provided by the town planner.~~  
14249 ~~6. Prior to the signing of the final plan by the Planning Board and to recordation of the final plan in~~  
14250 ~~the York County Registry of Deeds, the conditions of approval must be placed on the signature sheet.~~  
14251 ~~The conditions of approval must include the following note: "The Code Enforcement Officer will not~~  
14252 ~~issue any permits until all required performance guarantees, legal fees if the applicant requested and~~  
14253 ~~received counsel from the Town's attorney, peer review fees, field inspection fees, and any other~~  
14254 ~~fee(s) incurred, related to, and required for plan approval and site inspection, are paid."~~  
14255 ~~6. Additional Submissions Required for Review of Wireless Communication Services~~  
14256 ~~Facilities (WCSF).~~  
14257 ~~a. A visual impact analysis prepared by a landscape architect or other qualified professional~~  
14258 ~~acceptable to the town that quantifies the amount of visual impact on properties~~  
14259 ~~located within five hundred (500) feet, within two thousand five hundred (2,500) feet~~  
14260 ~~and within two miles of the WCSF. This analysis will include recommendations to~~  
14261 ~~mitigate adverse visual impacts on such properties;~~  
14262 ~~b. An analysis prepared by a qualified professional acceptable to the town that describes~~  
14263 ~~why this site and structure is critical to the operation for which it is proposed. The~~  
14264 ~~analysis shall address, at a minimum: existing and proposed service area; how this~~  
14265 ~~WCSF is integrated with other company operations, particularly other structures in~~  
14266 ~~Kittery and surrounding communities; future expansion needs in the area; the effect~~  
14267 ~~on company operations if this structure is not constructed in this location; other sites~~  
14268 ~~evaluated for location of this structure and how such sites compare to the proposed~~  
14269 ~~site; other options, if any, which could be used to deliver similar services, particularly~~  
14270 ~~if the proposed equipment can be co-located (shared use) on an existing structure;~~  
14271 ~~and an analysis to the projected life cycle of this structure and location;~~  
14272 ~~c. Certification by a structural engineer that construction of the structure shall satisfy all~~  
14273 ~~federal, state and local building code requirements as well as be able to satisfy the~~

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- 14274 requirement of maximum permitted co-location at the site (as approved by the  
14275 planning board/town planner);
- 14276 ~~\_\_\_\_\_ d. Payment of all required performance guarantees as a condition of plan approval, with a~~  
14277 ~~note on the plan so stating;~~
- 14278 ~~\_\_\_\_\_ e. Payment of the planning board application fees;~~  
14279 ~~\_\_\_\_\_ f. And all other requirements as per Section 16.36.060.~~
- 14280 ~~\_\_\_\_\_ C. Complete Final Plan.~~
- 14281 ~~\_\_\_\_\_ 1. The final plan shall fulfill all the requirements of a preliminary plan as indicated in~~  
14282 ~~subsection B of this section and shall show:~~
- 14283 ~~\_\_\_\_\_ a. All of the information presented on the preliminary plan and location map and any~~  
14284 ~~amendments thereto suggested or required by the board, or other required reviewing~~  
14285 ~~agency;~~
- 14286 ~~\_\_\_\_\_ b. Street names and lines, pedestrian ways, lots, easements and areas to be~~  
14287 ~~reserved for or dedicated to public use;~~
- 14288 ~~\_\_\_\_\_ c. The length of all straight lines, the deflection angles, radii, lengths of curves and~~  
14289 ~~central angles of all curves, tangent distances and tangent bearings for each street;~~
- 14290 ~~\_\_\_\_\_ d. Lots and blocks within a subdivision numbered in accordance with local practice;~~  
14291 ~~\_\_\_\_\_ e. Permanent reference monuments. They shall be constructed in accordance with~~  
14292 ~~specifications herein and their location noted and referenced on the final plan;~~
- 14293 ~~\_\_\_\_\_ f. Municipal impact data as required by Article XVIII of Chapter 16.28;~~  
14294 ~~\_\_\_\_\_ g. If no changes occurred to the preliminary plan it may also be considered to be the~~  
14295 ~~final plan.~~
- 14296 ~~\_\_\_\_\_ 2. There shall also be submitted to the board with the final plan:~~
- 14297 ~~\_\_\_\_\_ a. Written offers of cession to the municipality of all public open space shown on the~~  
14298 ~~plan, and copies of agreements, or other documents showing the manner in which spaces, title to~~  
14299 ~~which is reserved by the subdivider, are to be maintained.~~
- 14300 ~~\_\_\_\_\_ b. Written evidence that the municipal officers are satisfied with the legal sufficiency of~~  
14301 ~~the documents referred to in subsection (C)(2)(a) of this section. Such written evidence shall not~~  
14302 ~~constitute an acceptance by the municipality of any public open space referred to in subsection~~  
14303 ~~(C)(2)(a) of this section.~~
- 14304 ~~\_\_\_\_\_ c. A performance guaranty to secure completion of all improvements required by the~~  
14305 ~~board and written evidence that the town manager is satisfied with the sufficiency of such guaranty.~~
- 14306 ~~\_\_\_\_\_ D. Right of Way Plan.~~
- 14307 ~~\_\_\_\_\_ 1. A completed application for a planning board approved right of way shall include the~~  
14308 ~~requirements of Section 16.36.060 with the following modifications:~~
- 14309 ~~\_\_\_\_\_ a. The following submission requirements are not necessary for R.O.W. review:~~  
14310 ~~subsections (B)(2)(l), (m), (p), (r) — (w) and (z); (B)(3)(c) — (h); (B)(4); and (B)(5) of this section.~~
- 14311 ~~\_\_\_\_\_ b. Subsection (B)(1) of this section modified so that only eight copies are required.~~  
14312 ~~\_\_\_\_\_ c. Subsection (B)(2) of this section modified for proposes of right of way review so~~  
14313 ~~that:~~
- 14314 ~~\_\_\_\_\_ f. Floor plans and elevations of principal structures are not required;~~
- 14315  
14316



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\_\_\_\_\_g. ~~Include the size of the parcel minus the area in the R.O.W., and the street frontage excluding the R.O.W.;~~

\_\_\_\_\_h. ~~Only need to show and locate on the plan the names and addresses of all owners of record of contiguous property, including those across a street;~~

\_\_\_\_\_q. ~~Include required front yards from the R.O.W. on the plan.~~

\_\_\_\_\_E. ~~Additional Requirements. In its consideration of an application/plan, the board may at any point in the review, require the applicant to submit additional materials, studies, analyses, and agreement proposals as it may deem necessary for complete understanding of the application. Such materials may include those listed below.~~

\_\_\_\_\_1. ~~Fiscal Impact Analysis. An analysis of the relationship of the revenues to the town from the development and the costs of additional publicly funded resources;~~

\_\_\_\_\_2. ~~Traffic impact study, including the following data:~~

\_\_\_\_\_a. ~~An executive summary outlining the study findings and recommendations.~~

\_\_\_\_\_b. ~~A physical description of the project site and study area encompassed by the report with a diagram of the site and its relationship to existing and proposed development sites within the study area.~~

\_\_\_\_\_c. ~~A complete description of the proposed uses for the project site (in cases where specific uses have not been identified, the highest traffic generators within the category best fitting the proposed development shall be used to estimate traffic generators).~~

\_\_\_\_\_d. ~~Existing land uses and zoning districts in the vicinity of the site shall be described. Any proposals for the development of vacant parcels or redevelopment of parcels within the study area of which the municipality makes the applicant aware, shall be included in the description.~~

\_\_\_\_\_e. ~~Roadway geometry and existing traffic control devices on all major streets and intersections affected by the anticipated traffic generated.~~

\_\_\_\_\_f. ~~Trip generation shall be calculated for the proposed project and other proposed new projects and redevelopment projects within the study area using the most recent data available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide, and/or actual field data collected from a comparable trip generator (i.e., comparable in size, location and setting). This data will be presented in a summary table such that assumptions on trip generation and rates arrived at by the engineer are fully understandable to the board.~~

\_\_\_\_\_g. ~~The anticipated trip distribution of vehicles entering and exiting the proposed site during the appropriate peak hour(s) shall be described and diagramed.~~

\_\_\_\_\_h. ~~Trip assignment, the anticipated utilization of study area roadways by traffic generated by the proposed project, shall be described and diagramed.~~

\_\_\_\_\_i. ~~Existing traffic conditions in the study area will be identified and analyzed based upon actual field counts and/or recent available machine counts.~~

\_\_\_\_\_j. ~~Existing traffic conditions throughout the study area will be described and diagramed, specifically AADT, appropriate peak design hour(s), traffic volumes, roadway and intersection capacities, and levels of service.~~

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\_\_\_\_\_ k. Existing safety conditions shall be evaluated based upon the traffic accident data available for the most current three years and shall be described including link and node critical rate factors (CRF).

\_\_\_\_\_ l. Future traffic conditions on the roadway system will be estimated based on existing volumes, projected traffic growth in the general study area, projected traffic from approved development, and traffic generated by the proposed project, specifically AADT traffic, appropriate peak hour(s) traffic volumes, roadway and intersection capacity, roadway and intersection levels of service will be analyzed. When other projects are being proposed within the impact area of the project, the board may require these projects to be incorporated into the analysis.

\_\_\_\_\_ m. When the analysis of the proposed project's impact on traffic indicates unsatisfactory CRF, levels of service or operating capacity on study area roadways and intersections, a description of proposed improvements to remedy identified deficiencies shall be included.

\_\_\_\_\_ n. The base data collected and analyzed during the course of the traffic impact study shall be made available upon request of the board.

\_\_\_\_\_ o. If a topped development that requires a traffic impact study is within five hundred (500) feet of York or Eliot, Maine or if the study identifies impacts on segments of Route 1

\_\_\_\_\_ or Route 236 or on their intersections located in York or Eliot, Maine, the applicant shall provide evidence that a copy of the impact study has been given to the impacted municipality's chief administrative officer;

\_\_\_\_\_ 3. Environmental Analysis. An analysis of the effects that the development may have upon surrounding lands and resources, including intensive study of groundwater, ecosystems, or pollution control systems, as the board, upon review and recommendation by the conservation commission, may deem necessary;

\_\_\_\_\_ 4. Hydrologic Analysis. When required, an analysis of the effects that the development may have on groundwater shall be conducted in accordance with Section 16.32.520. This analysis shall always be required for mobilehome park proposals.

\_\_\_\_\_ F. Independent Review. The board shall require an applicant to pay the costs of an independent consultant or specialist whose services the board may require, at its discretion, to analyze any or all of the application, in the town's interest. (Ord. 9-05 § 3; Ord. 6-98 (part); land use and dev. code § 9.6, 1994)

**16.36.070 — Review procedures.**

\_\_\_\_\_ A. Hearing Rules. The following rules shall apply to the hearing:

\_\_\_\_\_ 1. The board may receive oral and documentary evidence, but shall exclude evidence which it considers irrelevant, immaterial, or unduly repetitious.

\_\_\_\_\_ 2. The chairperson of the board shall determine the order of presentation by parties to the hearing. Each party shall have the right to proceed without interruption, except that rulings by the chairperson shall prevail. The developer's presentation shall proceed in accordance with the checklist provided.

\_\_\_\_\_ 3. Any party may be represented by agent or attorney.

\_\_\_\_\_ 4. The town planner, in consultation with the code enforcement officer, commissioner of public works, and such other town officials as may have an interest in the application, shall present into evidence a written summary of findings and recommendations.

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~~5. The board may continue the hearing to another time and location, including the site of the development, as it deems necessary.~~

~~B. Board Action.~~

~~1. The board shall act to approve, approve with conditions, disapprove, table or continue plans other than sketch plans within thirty (30) days of the date of board acceptance for a subdivision plan, and within thirty-five (35) days for other plans. Failure of the board to act upon the application within such period shall constitute disapproval. The applicant may request a continuation for the purpose of introducing additional materials.~~

~~2. The board shall within thirty (30) days of sketch plan submission act upon the sketch plan as follows:~~

~~a. The board shall determine whether the sketch plan proposal complies with the standards contained herein, and shall where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.~~

~~b. If the concept is approved, inform subdivision applicants in writing of the contour interval which will be required for the plans; and will classify the sketch plan into one of two categories defined herein, as a minor subdivision or a major subdivision.~~

~~3. Any plan may be continued for a total period not to exceed ninety (90) calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the developer and the board. Such plan is automatically scheduled for the agenda of the next regular board meeting after the ninetieth day and action completed in accordance with the requirements and timing contained in this title whether the developer has accomplished the purposes for which continued or not.~~

~~4. The action to table by the board shall be an action to temporarily suspend action and not to suppress a vote on the plan.~~

~~C. Finding of Fact.~~

~~1. Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:~~

~~a. Pollution. The proposed development will not result in undue water or air pollution. In making this determination, it shall at least consider:~~

~~i. The elevation of the land above sea level and its relation to the floodplains;~~

~~ii. The nature of soils and subsoils and their ability to adequately support waste disposal;~~

~~iii. The slope of the land and its effect on effluents;~~

~~iv. The availability of streams for disposal of effluents;~~

~~v. The applicable state and local health and water resource rules and regulations;~~

~~and~~

~~vi. The safe transportation, disposal and storage of hazardous materials;~~

~~b. Sufficient Water. The proposed development has sufficient water available for the reasonably foreseeable needs of the development;~~

~~c. Municipal Water Supply. The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used;~~

~~d. Erosion. The proposed development will not cause an unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;~~

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\_\_\_\_\_e. ~~Traffic. The proposed development will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed. Furthermore, the proposed development will provide adequate traffic circulation, both on-site and off-site;~~

\_\_\_\_\_f. ~~Sewage Disposal. The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;~~

\_\_\_\_\_g. ~~Municipal Solid Waste Disposal. The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;~~

\_\_\_\_\_h. ~~Aesthetic, Cultural and Natural Values. The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;~~

\_\_\_\_\_i. ~~Conformity with Local Ordinances and Plans. The proposed development conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;~~

\_\_\_\_\_j. ~~Financial and Technical Capacity. The developer has adequate financial and technical capacity to meet the standards of this section;~~

\_\_\_\_\_k. ~~Surface Waters—Outstanding River Segments. Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred fifty (250) feet of any wetland, great pond or river as defined in MRSA Title 38, Chapter 3, Subchapter I, Article 2-B, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water;~~

\_\_\_\_\_l. ~~Groundwater. The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;~~

\_\_\_\_\_m. ~~Flood Areas. All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the developer shall determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation;~~

\_\_\_\_\_n. ~~Freshwater Wetlands. All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;~~

\_\_\_\_\_o. ~~River, Stream or Brook. Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in MRSA Title 38, Section 480-B, Subsection 9; and~~

\_\_\_\_\_p. ~~Stormwater. The proposed development will provide for adequate stormwater management; and~~

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- 14492 ~~\_\_\_\_\_ q. Spaghetti-Lots Prohibited. If any lots in a proposed subdivision have shore frontage~~  
14493 ~~on a river, stream, brook or coastal wetland as these features are defined in MRSA~~  
14494 ~~Title 38, Section 480-B, none of the lots created within the subdivision shall have a~~  
14495 ~~lot depth to shore frontage ratio greater than five to one;~~  
14496 ~~\_\_\_\_\_ r. Height of proposed tower or other structure does not exceed that which is essential~~  
14497 ~~for its intended use and public safety;~~  
14498 ~~\_\_\_\_\_ s. Proximity of tower to residential development or zones;~~  
14499 ~~\_\_\_\_\_ t. Nature of uses on adjacent and nearby properties;~~  
14500 ~~\_\_\_\_\_ u. Surrounding topography;~~  
14501 ~~\_\_\_\_\_ v. Surrounding tree coverage and foliage;~~  
14502 ~~\_\_\_\_\_ w. Design of the tower, antenna, or facility with particular reference to design~~  
14503 ~~characteristics that have the effect of eliminating or significantly reducing visual~~  
14504 ~~obtrusiveness;~~  
14505 ~~\_\_\_\_\_ x. Proposed ingress and egress to the site;~~  
14506 ~~\_\_\_\_\_ y. Documentation that co-location with another existing WCSF has been thoroughly~~  
14507 ~~pursued and is not a feasibly option;~~  
14508 ~~\_\_\_\_\_ z. Visual impacts on view sheds, ridgelines, and other impacts caused by tower~~  
14509 ~~location, tree and foliage clearing and placement of structures, and associated~~  
14510 ~~development;~~  
14511 ~~\_\_\_\_\_ aa. That the proposed WCSF will not unreasonably interfere with the view of or from~~  
14512 ~~any public park, natural scenic vista, and historic building or major view corridor and~~  
14513 ~~the Kittery waterfront and harbor;~~  
14514 ~~\_\_\_\_\_ bb. That the proposed WCSF is not constructed in such a manner as to result in~~  
14515 ~~needless height, mass, and guy-wire supports, with documentation having been~~  
14516 ~~provided and reviewed regarding the design capacity and/or the remaining co-~~  
14517 ~~location capacity of the tower/facility;~~  
14518 ~~\_\_\_\_\_ cc. That "stealth" technology has been pursued and is not a viable option.~~  
14519 ~~\_\_\_\_\_ 2. When reviewing any right-of-way plan for approval, the planning board shall consider the~~  
14520 ~~following additional criteria:~~  
14521 ~~\_\_\_\_\_ a. The creation of the proposed R.O.W. does not create any nonconforming lots or~~  
14522 ~~buildings;~~  
14523 ~~\_\_\_\_\_ b. The R.O.W. could reasonably permit the right of passage for an automobile; and~~  
14524 ~~\_\_\_\_\_ c. The plan shall be titled, "Right-of-Way Plan."~~  
14525 ~~\_\_\_\_\_ D. Conditions of Approval.~~  
14526 ~~\_\_\_\_\_ 1. An approval by the board shall take the form of an agreement between the town and the~~  
14527 ~~developer, incorporating as elements the application, the board's findings of fact, and~~  
14528 ~~such conditions as the board may impose upon approval.~~  
14529 ~~\_\_\_\_\_ 2. Where improvements for the common use of lessees or the general public have been~~  
14530 ~~approved, the planning board shall require a performance guaranty of amount sufficient~~  
14531 ~~to pay for said improvements as a part of the agreement.~~  
14532 ~~\_\_\_\_\_ 3. The board shall instruct the code enforcement officer to issue no occupancy permit until~~  
14533 ~~all conditions of the agreement have been satisfied.~~  
14534 ~~\_\_\_\_\_ 4. The board shall send copies of the agreement to the town manager and code~~  
14535 ~~enforcement officer.~~

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- 14536 ——— 5. ~~Conditions of the board's approval may include, but are not limited to, type of vegetation,~~  
14537 ~~increased setbacks and yard space, specifications for sewage and water supply facilities,~~  
14538 ~~buffers and screens, period of maintenance sureties, deed restrictions, locations of piers,~~  
14539 ~~docks, parking or signs, and type or style of construction. Additionally, the amount of all~~  
14540 ~~guarantees which may be required.~~
- 14541 ——— 6. ~~Conditions imposed shall have been met before the plan may be given final approval~~  
14542 ~~unless specifically waived, upon written request by the applicant, by formal board action~~  
14543 ~~wherein the character and extent of such waivers which may have been requested are~~  
14544 ~~such that they may be waived without jeopardy to the public health, safety and general~~  
14545 ~~welfare.~~
- 14546 ——— 7. ~~The decision of the planning board plus any conditions imposed shall be noted on three~~  
14547 ~~copies of the preliminary plan. One copy shall be returned to the applicant, one retained~~  
14548 ~~by the board and one forwarded to the municipal officers.~~
- 14549 ——— 8. ~~Approval of a preliminary plan shall not constitute approval of a final plan, but rather it~~  
14550 ~~shall be deemed an expression of approval of the design submitted on the preliminary~~  
14551 ~~plan as a guide to the preparation of the final plan.~~
- 14552 ——— 9. ~~Before the board grants approval of a final plan, the developer shall, in an amount and~~  
14553 ~~form acceptable to the town manager, file with the municipal treasurer an instrument to~~  
14554 ~~cover the full cost of the required improvements. A period of one year (or such other~~  
14555 ~~period as the planning board may determine appropriate, not to exceed three years) shall~~  
14556 ~~be set forth for the guaranty time within which required improvements must be~~  
14557 ~~completed. The performance guaranty shall include an amount required for recreation~~  
14558 ~~land or improvements as specified. (Ord. 6-98 (part); Land use and dev. code § 9.7,~~  
14559 ~~1994)~~
- 14560
- 14561 **16.36.080 — Final approval.**
- 14562 ——— A. ~~Official Approval.~~
- 14563 ——— 1. ~~After considering all submissions, evidence and testimony in accordance with the~~  
14564 ~~requirements of all applicable state and municipal codes, the planning board shall make a~~  
14565 ~~finding of facts for each and every proposed phase of development, including the~~  
14566 ~~development master plan and each subsequent development plan, and take formal~~  
14567 ~~action as required in this title.~~
- 14568 ——— 2. ~~A plan may be deemed to have final approval only when the board has indicated~~  
14569 ~~approval by formal action and the plan has been properly signed by a majority of the~~  
14570 ~~board members or by the chair only, if so voted by the board.~~
- 14571 ——— 3. ~~The development master plan and each subsequent development plan thereof may be~~  
14572 ~~deemed to have final approval only when the board has indicated approval by formal~~  
14573 ~~action and the plan has been properly signed by a majority of the board members or by~~  
14574 ~~the chair only, if so voted by the board.~~
- 14575 ——— B. ~~Plan Phasing. The board may permit phasing of the plans where it can be demonstrated to~~  
14576 ~~the board's satisfaction that such phasing would result in a safe and orderly development of~~  
14577 ~~the plan. Phasing is subject to any conditions deemed necessary to assure that a reasonable~~  
14578 ~~mixture of uses is completed within each separate phase of the plan. Where projects are to~~  
14579 ~~be constructed in phases, phasing of stormwater management, water mains and streets are~~

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part of the review process. Portions of both the developed and undeveloped site, impacted by interim infrastructure conditions such as un-looped water systems, stormwater runoff from unfinished areas onto finished areas and vice versa, dead end streets, etc., must be clearly defined and shown on the plans. The board may permit construction of phases “out of order” only when the storm drainage plan and the water plan, etc. have been reviewed and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible. The applicant may file a section of the approved plan with the municipal officers and the York County registry of deeds if said section constitutes at least twenty-five percent (25%) of the total number of lots, or for plans including buildings, twenty-five percent (25%) of the gross area, contained in the approved plan. In all circumstances, plan approval of the remaining sections of the plan will remain in effect for three years unless the developer requests and the board grants extensions of time equivalent to the requirements for approved plans in Section 16.36.050(E).

— C. Approval Not Acceptance of Property. The approval by the board of a plan, a development master plan or any other subsequent development plan is not to be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement, or other open space shown on the plan. When a park, playground, or other recreation area is shown on the plan, approval of the plan does not constitute an acceptance by the municipality of such areas. The planning board shall require the plan to be endorsed with appropriate notes to this effect. The planning board may also require the filing of a written agreement between the applicant and the municipal officers covering future deed and title, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such recreation area.

— D. Plan Revisions after Approval. No changes, erasures, modifications or revisions may be made to any board approved final plan, unless in accordance with the planner’s and CEO’s powers and duties as found in Chapter 16.16, or unless the plan has been resubmitted and the board specifically approves such modifications. In the event a final plan is recorded without complying with this requirement, the same is null and void, and the board shall institute proceedings to have the plan stricken from town records and the York County registry of deeds. (Ord. 7-08 (part): land use and dev. code § 9.8, 1994)

**Article IV Preliminary Plan Application Review and Approval Process Phase.**

**16.9.4.1 Planner review and acceptance process- preliminary plan.**

A. Preliminary Plan Application Filing and Completeness Review. A determination as to whether the town planner accepts the application is based on a review of the application in accordance with the submission contents checklist, filed with the plan, which serves to indicate all elements required under Section 16.36.060 have been received, or written request for waiver of submittal for any non-received items is included. The application must be accompanied by a plan and the required fee together with a certification that the applicant has notified abutters by mail of the filing of the plan application for approval.

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B. Receipt and Scheduling Review.. Upon acceptance, the town planner must place the application on the Planning Board's agenda for Planning Board completeness review and issue a dated receipt to the applicant, which is thereafter the official time of submission.

C. Site Inspection. In the course of the review of the plan, the planner must make a physical inspection and may make photographic record of the existing conditions on the site.

D. Advisory Opinions. At any time during review, the planner may request an advisory opinion from the Planning Board, conservation commission or port authority, on issues related to the application. Where applications are for land within wetland setbacks or the Resource Protection Overlay Zone, the conservation commission must be invited to review and offer recommendations from an environmental protection perspective. The planner also must make recommendation on the necessity for independent review.

E. Planner Analysis. The planner must analyze the application and forward comments to the applicant and the Planning Board with a recommendation as to review category (e.g., site, minor/major subdivision).

F. Board of Appeals Review Encouraged. Where action by the board of appeals will be required, such action must be encouraged prior to planning board review as indicated in Section 16.24.050(F).

G. Upon determination by the planner that the preliminary plan application is complete, the planner must accept it, together with an application fee in the amount set by the Kittery town council. (See Appendix I fee schedule.) No application may be deemed complete by the planning board until payment of the proper fees.

**16.9.4.2Planner review and acceptance submittal content- preliminary plan.**

A. Preliminary Plan Application Submittal Content. A completed application must include on the plan or attached thereto, the following items, unless upon the applicant's written request, the Planning Board, by formal action, , waives or defers any requirement(s) for submission.

1. A minimum of ten (10) paper copies of the application form, plan and all attachments thereto plus if applicable, five (5) paper copies of the 24 x 36 inches size plan sheets.

2. Plan must include:

a. Plan sheets drawn on a reproducible medium and must measure no less than eleven (11) inches by seventeen (17) inches and no larger than twenty-four (24) inches by thirty-six (36) inches; with a:

b. Scale of the drawings no greater than one inch equals thirty (30) feet for developments under ten (10) acres, and one inch equals fifty (50) feet for all others;



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c. Title block in the lower right-hand corner. The block must contain:

i. Name(s) and address(es) of the applicant and owner,

Name of the project.

ii. Name and address of the preparer of the plan, with professional seal, if applicable,

iii. Map and lot number(s) according to town tax maps,

iv. Date of plan preparation/revision, and a unique ID number for the plan and any revisions;

d. Standard boundary survey conducted by a surveyor licensed in the state of Maine, in the manner recommended by the State Board of Registration for Land Surveyors;

e. An arrow showing true north and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;

f. Locus map showing the property in relation to surrounding roads, within two thousand (2,000) feet of any property line of the development,

g. Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;

h. Names and addresses of all owners of record of property abutting the development, including those across a street;

i. Indicate zoning, including zones of abutting properties, if different;

k. Proposed Development Area Conditions including, but not limited to:

(1) Structures; their location and description including signs, to be placed on the site, floor plan of exterior walls and accesses located within one hundred (100) feet of the property line;

(2) Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainage ways;

(3) Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown;

(4) Domestic water source;

(5) Parks, open space, or conservation easement locations;

(6) Lot lines, interior and exterior, , right-of-way, and street alignments;

(7) Road and other paved ways plans, profiles and typical sections including all relevant data;

(8). Setbacks Existing and proposed;

(10) Machinery permanently installed locations likely to cause appreciable noise at the lot lines;

(11) Raw, finished or waste materials to be stored outside the buildings, and any stored material of a toxic or hazardous nature;

(12) Topographic contours of existing contours and finished grade elevations within the development;

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(13) Sidewalks, curbs, driveways, fences, retaining walls and other artificial features locations and dimensions proposed;;

(14) Landscaping required including size and type of plant material; (15).

Temporary markers locations adequate to enable the Planning Board to readily locate and appraise the layout of the development;

(16) Land proposed to be dedicated to public use and the conditions of such dedication;

(17) Natural features or site elements to be preserved.

3. Supporting documentation must include:

a. Vicinity map and aerial photograph showing the property in relation to surrounding properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable comprehensive plan features such as proposed park locations, land uses, zones, and other features within five hundred (500) feet from any boundary of the proposed development;

b. Existing Development Area Conditions including but not limited to: –

(1) location and description of all structures, including signs, existing on the site, together with accesses located within one hundred (100) feet of the property line;

(2) essential physical features such as watercourses, wetlands, flood plains, wildlife habitat areas, forest cover, and outcroppings;

(3) Utilities existing , including power, water, sewer, holding tanks, bridges, culverts and drainage ways;

c. Legal interest documents showing legal interest of the applicant in the property to be developed. Such documents must contain the description upon which the survey was based;

d. Property encumbrances currently affecting the property, as well as any proposed encumbrances;

e. Water District approval letter, if public water is used, indicating there is adequate supply and pressure to be provided to the development;

f. Erosion and sedimentation control plan endorsed by the York County soil and water conservation district;

g. Stormwater management plan for stormwater and other surface water drainage prepared by a registered professional engineer including a Maintenance Plan and Agreement that defines maintenance responsibilities, responsible parties, shared costs, and schedule. Where applicable, a Maintenance Agreement must be included in the Document of Covenants, Homeowners Documents and/or as riders to the individual deed and recorded with the York County Registry of Deeds.

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h. Soil survey for York County covering the development. Where the soil survey shows soils with severe restrictions for development, a high intensity Class “A” soil survey must be provided;

i.. Vehicular traffic report estimating the amount and type of vehicular traffic that will be generated by the development on a daily basis and for peak hours.

j. Traffic impact analysis in accordance with subsection (E)(2) for developments involving forty (40) or more parking spaces or which are projected to generate more than four hundred (400) vehicle trips per day;

k. Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to be accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;

l. Town Sewage Department or community system authority letter, when sewage disposal is to be through a public or community system, approving the connection and its location;

n. Additional submissions as may be required by other sections of this title such as for clustered development, mobile home parks, junkyards, or subsection ?? of this section, must be provided.

o. Letters of evaluation of the development by the chief of police, fire chief, commissioner of public works, and, for residential applications, the superintendent of schools, must be collected and provided by the town planner.

p. Additional Requirements. In its consideration of an application/plan, the Planning Board may at any point in the review, require the applicant to submit additional materials, studies, analyses, and agreement proposals as it may deem necessary for complete understanding of the application. Such materials may include:

1. Traffic impact study, including the following data:

a. An executive summary outlining the study findings and recommendations.

b. A physical description of the project site and study area encompassed by the report with a diagram of the site and its relationship to existing and proposed development sites within the study area.

c. A complete description of the proposed uses for the project site (in cases where specific uses have not been identified, the highest traffic generators within the category best fitting the proposed development must be used to estimate traffic generators).

d. Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals for the development of vacant parcels or redevelopment of parcels within the study area of which the municipality makes the applicant aware, must be included in the description.

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- 14797
- 14798 e. Roadway geometry and existing traffic control devices on all major streets and intersections
- 14799 affected by the anticipated traffic generated.
- 14800
- 14801 f. Trip generation must be calculated for the proposed project and other proposed new projects
- 14802 and redevelopment projects within the study area using the most recent data available from the
- 14803 Institute of Transportation Engineers' (ITE) Trip Generation Guide, and/or actual field data
- 14804 collected from a comparable trip generator (i.e., comparable in size, location and setting). This
- 14805 data will be presented in a summary table such that assumptions on trip generation and rates
- 14806 arrived at by the engineer are fully understandable to the Planning Board.
- 14807
- 14808 g. The anticipated trip distribution of vehicles entering and exiting the proposed site during the
- 14809 appropriate peak hour(s) must be described and diagrammed.
- 14810
- 14811 h. Trip assignment, the anticipated utilization of study area roadways by traffic generated by the
- 14812 proposed project, must be described and diagrammed.
- 14813
- 14814 i. Existing traffic conditions in the study area will be identified and analyzed based upon actual
- 14815 field counts and/or recent available machine counts.
- 14816
- 14817 j. Existing traffic conditions in the study area will be described and diagrammed, specifically
- 14818 AADT, appropriate peak design hour(s), traffic volumes, roadway and intersection capacities, and
- 14819 levels of service.
- 14820
- 14821 k. Existing safety conditions must be evaluated based upon the traffic accident data available for
- 14822 the most current three years and described including link and node critical rate factors (CRF).
- 14823
- 14824 l. Future traffic conditions on the roadway system will be estimated based on existing volumes,
- 14825 projected traffic growth in the general study area, projected traffic from approved development,
- 14826 and traffic generated by the proposed project, specifically AADT traffic, appropriate peak hour(s)
- 14827 traffic volumes, roadway and intersection capacity, roadway and intersection levels of service will
- 14828 be analyzed. When other projects are being proposed within the impact area of the project, the
- 14829 Planning Board may require these projects to be incorporated into the analysis.
- 14830
- 14831 m. When the analysis of the proposed project's impact on traffic indicates unsatisfactory CRF,
- 14832 levels of service or operating capacity on study area roadways and intersections, a description of
- 14833 proposed improvements to remedy identified deficiencies must be included.
- 14834
- 14835 n. The base data collected and analyzed during the course of the traffic impact study must be
- 14836 made available upon request of the Planning Board.
- 14837
- 14838 o. If a topped development that requires a traffic impact study is within five hundred (500) feet of
- 14839 York or Eliot, Maine or if the study identifies impacts on segments of Route 1 or Route 236 or

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on their intersections located in York or Eliot, Maine, the applicant must provide evidence that a copy of the impact study has been given to the impacted municipality's chief administrative officer;

2. Environmental Analysis. An analysis of the effects that the development may have upon surrounding lands and resources, including intensive study of groundwater, ecosystems, or pollution control systems, as the Planning Board, upon review and recommendation by the conservation commission, may deem necessary;

3. Hydrologic Analysis. When required, an analysis of the effects that the development may have on groundwater must be conducted in accordance with Section 16.32.520. This analysis is always required for mobile home park proposals.

4. Wireless Communication Services Facilities (WCSF) Analysis.

a. A visual impact analysis prepared by a landscape architect or other qualified professional acceptable to the town that quantifies the amount of visual impact on properties located within five hundred (500) feet, within two thousand five hundred (2,500) feet and within two miles of the WCSF. This analysis will include recommendations to mitigate adverse visual impacts on such properties;

b. An analysis prepared by a qualified professional acceptable to the town that describes why this site and structure is critical to the operation for which it is proposed. The analysis must address, at a minimum: existing and proposed service area; how this WCSF is integrated with other company operations, particularly other structures in Kittery and surrounding communities; future expansion needs in the area; the effect on company operations if this structure is not constructed in this location; other sites evaluated for location of this structure and how such sites compare to the proposed site; other options, if any, which could be used to deliver similar services, particularly if the proposed equipment can be co-located (shared use) on an existing structure; and an analysis to the projected life cycle of this structure and location;

c. Certification by a structural engineer that construction of the structure satisfies all federal, state and local building code requirements as well as the requirement of maximum permitted co-location at the site as approved by the Planning Board / town planner;

d. Payment of all required performance guarantees as a condition of plan approval, with a note on the plan so stating;

e. Payment of the Planning Board application fees;

f. And all other requirements per Section 16.36.

**16.9.4.3 Planning Board acceptance review.**

A. At a Planning Board acceptance review meeting, the Planning Board must accept or deny the preliminary plan application in accordance with the following:

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1. applicant(s) have standing by virtue of vested interest (right, title, or interest) in all properties under consideration in the plan;

2. application is complete in accordance with the requirements of Section 16.36.060 or the planning board accepts and approves by formal action any written requests for waiver of submission contents.

3. At the acceptance review, if the planning board accepts the preliminary plan, it must confirm the review category; determine if any studies/review or analysis is required in accordance with Section 16.36.060(D); and schedule the date for public notice and hearing.

B. Public Hearing Scheduling. An accepted application must be scheduled for review and public hearing at the next open date on the planning board agenda, but no earlier than fifteen (15) days and no later than thirty (30) days from the date of board acceptance.

In the case of subdivision applications, such public hearing must be scheduled no earlier than fifteen (15) days and no later than thirty (30) days from the date of board acceptance. Public hearings for all other applications must be scheduled within thirty-five (35) days from the date of board acceptance. With the concurrence of the applicant, the deadlines established above may be modified.

For a right of way plan application, at the Planning Board's discretion, a public hearing may or may not be held..

C.. Public Notice. The town planner must place a public notice of such hearing in a newspaper of general circulation in the town at least seven and not more than fourteen (14) days prior to the scheduled hearing date; said notice must also be posted in at least three prominent public locations in town at least ten (10) days prior to the hearing; and, in the case of a plan located within five hundred (500) feet of the Towns of Eliot or York, Maine, must be forwarded to the Southern Maine Regional Planning Commission and to the town clerk of Eliot or York, Maine, at least ten (10) days prior to the hearing.

A subdivision public notice a must be published at least two times in a newspaper of general circulation in the town. The date of the first notice must be at least seven days before the scheduled public hearing date.

D.. Abutter Notice.

1. The town planner must cause written notice of the hearing to be sent by postage paid, first class mail provided by the applicant to all owners of abutting property, as herein defined (within 150 feet of the property), and by regular mail to the code enforcement officer, the commissioner of public works, , and where applicable, the port authority or conservation commission, at least seven days prior to the scheduled date. Failure of the parties to receive said notice does not invalidate any board action.

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2. For a right of way plan application, , The town planner must cause written notice of the public hearing to be sent by postage paid, first class mail provided by the applicant to all owners that about the right of way, including those across a public street, and by regular mail to the code enforcement officer, commissioner of public works, conservation commission and if applicable the port authority, at least seven days prior to the scheduled date. .

3. For a Wireless Communication System Facility (WCSF) plan application, the town planner must cause written notice of the hearing sent by postage paid, first class mail provided by the applicant, at least seven days prior to the hearing, to all owners of abutting property and property located within one thousand (1,000) feet of any property line of the property for which the permit is requested. Notice also be given to any town located within one thousand (1,000) feet of the proposed telecommunications facility. The applicant must provide this notification and must present proof of such notification to the town planner. The notification must include: the name of the applicant, location of the property, a brief description of the project, and a plot plan identifying the proposed site layout in relation to nearby streets and properties.

**16.9.4.4 Planning Board review schedule**

**A. All Plans.**

1. Within thirty (30) days after acceptance by the Planning Board of a subdivision plan, and within thirty-five (35) days after acceptance by the Planning Board of other applications, the Planning Board must approve the plan, approve the plan with conditions, disapprove the plan, postpone action on the plan, or continue the review to another time/location.

2. Continuation or tabling of a review beyond the thirty (30) day period for subdivision applications, and the thirty-five (35) day period for other applications, must be for good and sufficient reason and be acceptable to both the applicant and the Planning Board.

3. Any plan may be continued for a total period not to exceed ninety (90) calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the ninetieth day and action completed in accordance with the requirements and timing contained in this title whether the applicant has accomplished the purposes for which continued or not.

4. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

5.. Failure of the Planning Board to act within the thirty (30) day period for an accepted subdivision application, and the thirty-five (35) day period for other Planning Board accepted applications, constitutes disapproval of the plan in which case the applicant may resubmit the plan without payment of an additional application fee.

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**B. Public Hearing**

The following rules apply to the hearing:

1. The Planning Board may receive oral and documentary evidence, but must exclude evidence which it considers irrelevant, immaterial, or unduly repetitious.

2. The chairperson of the Planning Board must determine the order of presentation by parties to the hearing. Each party must have the right to proceed without interruption, except that rulings by the chairperson prevail. The applicant's presentation must proceed in accordance with the checklist provided.

3. Any party may be represented by agent or attorney.

4. The town planner, in consultation with the code enforcement officer, commissioner of public works, and such other town officials as may have an interest in the application, must present into evidence a written summary of findings and recommendations.

5. The Planning Board may continue the hearing to another time and location, including the site of the development, as it deems necessary.

**16.9.4.5 Planning Board Review and Decision**

**A. Planning Board Review and Decision - Preliminary Plan.**

1. Within six months after approval/classification of a sketch plan by the board, the applicant must submit an application for approval of a subdivision preliminary plan or site plan final plan in the form prescribed herein.

2. The Planning Board must approve, approve with conditions or deny the preliminary plan.

3. Approval of a preliminary plan does not constitute approval of a final plan, but rather it is be deemed an expression of approval of the design submitted on the preliminary plan as a guide to the preparation of the final plan.

4. Conditions of the Planning Board's approval may include, but are not limited to, type of vegetation, increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of piers, docks, parking or signs, type or style of construction, and the amount of all guarantees which may be required.

5.. Conditions required by the Planning Board at the preliminary plan review phase must have been met before the final plan may be given final approval unless specifically waived, upon written request by the applicant, by formal Planning Board action wherein the character and extent of



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such waivers which may have been requested are such that they may be waived without jeopardy to the public health, safety and general welfare.

6.. The decision of the planning board plus any conditions imposed must be noted on three copies of the preliminary plan. One copy must be returned to the applicant, one retained by the Planning Board and one forwarded to the municipal officials.

7. If the final plan is not submitted to the Planning Board within six months after classification of the sketch plan, the Planning Board may refuse to act on the subdivision preliminary plan or final site plan and require resubmission of the sketch plan. All such plans resubmitted must comply with all normal application requirements.

B.. Planning Board Review and Decision - Final Plan.

1. The applicant must, within six months after approval of a preliminary plan, file with the Planning Board an application for approval of the final plan in the form prescribed herein.

2. If the final plan is not submitted to the Planning Board within six months after the approval of the preliminary plan, the Planning Board may refuse to act on the final plan and require resubmission of the preliminary plan. Any plan resubmitted must comply with all application requirements, including payment of fees.

3. . Application/Plan Review Expiration.

a.. Uncounted Time. When an approved plan is required to be reviewed/approved by another agency (e.g., DEP, BOA, KPA) any period the plan is at such an agency or that a plan is continued by the Planning Board in accordance with Section 16.36.070(B)(3), from time of submission to time of decision inclusive, verifiable by recorded documentation, is not counted as part of the cumulative time periods described in this Section.

b. Requests for Extension. The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis.

4. Final Plan Application Submittal Content.

A. A complete final plan application must fulfill all the requirements of a preliminary plan as indicated in subsection 16.36.??? of this section and must show the following items, unless the Planning Board, by formal action, upon the applicant's written request, waives or defers any requirement(s) for submission.

B. If no changes occurred to the preliminary plan it also may be considered to be the final plan.

C. All of the information presented on the preliminary plan and vicinity map and any amendments thereto suggested or required by the Planning Board, or other required reviewing agency;

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D. Street names and lines, pedestrian ways, lots, easements and areas to be reserved for or dedicated to public use;

E. The length of all straight lines, the deflection angles, radii, lengths of curves and central angles of all curves, tangent distances and tangent bearings for each street;

F. Lots and blocks within a subdivision numbered in accordance with local practice;

G. Permanent reference monuments. They must be constructed in accordance with specifications herein and their location noted and referenced on the final plan;

H. Structures; their location and description including signs, to be placed on the site, floor plans and elevations of principal structures as well as detail of all structures showing building materials and colors, and accesses located within one hundred (100) feet of the property line;

I. Outdoor lighting and signs location and description. ;

J. Machinery permanently installed locations likely to cause appreciable noise at the lot lines;

K. Raw, finished or waste materials to be stored outside the buildings, and any stored material of a toxic or hazardous nature;

L. Fences, retaining walls and other artificial features locations and dimensions proposed;

M. Landscaping required including size and type of plant material;

N. Protected land boundary markers. Boundaries of protected land areas must be permanently marked using Town environmental boundary markers. The five boundary markers are : (1) Conservation Land, (2) Protected Wetland, (3) Protected Vernal Pool, (4) Wildlife Habitat, and (5) Wetlands. Depending on the proposed development the required markers(s), number of markers, placement and spacing, and the method of mounting, must be indicated on the approved final plans(s).

O.. Municipal impact analysis of the relationship of the revenues to the town from the development and the costs of additional publicly funded resources including;

1. Review for impacts.

A list of the construction items that will be completed by the developer prior to the sale of lots.

2. Municipal construction and maintenance items.

A list of construction and maintenance items that must be borne by the municipality, which must include, but not be limited to:

a.. Schools, including busing;

b. Road maintenance and snow removal;

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c. Police and fire protection;

d. Solid waste disposal;

e. Recreation facilities;

f. Runoff water disposal drainage ways and/or storm sewer enlargement with sediment traps.

3. Municipal costs and revenues.

Cost estimates to the town for the above services and the expected tax revenue of the development.

P. Open Space Land Cession Offers. Written offers of cession to the municipality of all public open space shown on the plan, and copies of agreements, or other documents showing the manner in which space(s), title to which is reserved by the subdivider, are to be maintained.

Q. Open Space Land Cession Offers Acknowledgement by Town. Written evidence that the municipal officers are satisfied with the legal sufficiency of the documents referred to in subsection (C)(2)(a) of this section. Such written evidence does not constitute an acceptance by the municipality of any public open space referred to in subsection (C)(2)(a) of this section.

R. Performance guaranty and Town Acceptance to secure completion of all improvements required by the Planning Board and written evidence the town manager is satisfied with the sufficiency of such guaranty.

(1) Where improvements for the common use of lessees or the general public have been approved, the Planning Board must require a performance guaranty of amount sufficient to pay for said improvements as a part of the agreement.

(2) Process. Before the Planning Board grants approval of a final plan, the applicant must, in an amount and form acceptable to the town manager, file with the municipal treasurer an instrument to cover the full cost of the required improvements. A period of one year (or such other period as the planning board may determine appropriate, not to exceed three years) is the guaranty time within which required improvements must be completed. The performance guaranty must include an amount required for recreation land or improvements as specified.

S. Maintenance Plan and Agreement defining maintenance responsibilities, responsible parties, shared costs, and schedule. Where applicable, a Maintenance Agreement must be included in the Document of Covenants, Homeowners Documents and/or as riders to the individual deed

T. Phasing Plan Upon applicants request, the Planning Board may permit phasing of the plans where it can be demonstrated to the Planning Board's satisfaction that such phasing would result in a safe and orderly development of the plan.

a. Phasing is subject to any conditions deemed necessary to assure a reasonable mixture of uses is completed within each separate phase of the plan.

b. Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.

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c. Portions of both the developed and undeveloped site, impacted by interim infrastructure conditions such as un-looped water systems, stormwater runoff from unfinished areas onto finished areas and vice versa, dead end streets, etc., must be clearly defined and shown on the plans.

d. The Planning Board may permit construction of phases “out of order” only when the storm drainage plan and the water plan, etc. have been reviewed and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

e. The applicant may file a section of the approved plan with the municipal officials and the York County registry of deeds if said section constitutes at least twenty-five percent (25%) of the total number of lots, or for plans including buildings, twenty-five percent (25%) of the gross area, contained in the approved plan. In all circumstances, plan approval of the remaining sections of the plan will remain in effect for three years unless the applicant requests and the Planning Board grants extensions of time equivalent to the requirements for approved plans in Section 16.36.050(E).

U. Right-of-Way Plan.

1. A completed application for a planning board approved right-of-way must include the requirements of Section 16.36.060 with the following modifications:

a. The following submission requirements are not necessary for R.O.W. review: subsections (B)(2)(l), (m), (p), (r)—(w) and (z); (B)(3)(c)—(h); (B)(4); and (B)(5) of this section.

b. Subsection (B)(1) of this section modified so that only eight copies are required.

c. Subsection (B)(2) of this section modified for proposes of right-of-way review so that:

d. Floor plans and elevations of principal structures are not required;

e. Include the size of the parcel minus the area in the R.O.W., and the street frontage excluding the R.O.W.;

f. Only need to show and locate on the plan the names and addresses of all owners of record of contiguous property, including those across a street;

g. Include required front yards from the R.O.W. on the plan.

5. Board Action.

a. The Planning Board must act to approve, approve with conditions, disapprove, postpone action or continue a plan, other than a sketch plan, within thirty (30) days of the date of Planning Board acceptance for a subdivision plan, and within thirty-five (35) days for other plans. Failure of

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the Planning Board to act upon the application within such period constitutes disapproval. The applicant may request a continuation for the purpose of introducing additional materials.

b. The Planning Board must within thirty (30) days of sketch plan submission act upon the sketch plan as follows:

(1) The Planning Board must determine whether the sketch plan proposal complies with the standards contained herein, and must where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.

(2) If the concept is approved, inform subdivision applicants in writing of the contour interval which will be required for the plans; and will classify the sketch plan into one of two categories defined herein, as a minor subdivision or a major subdivision.

c. Any plan may be continued for a total period not to exceed ninety (90) calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the ninetieth day and action completed in accordance with the requirements and timing contained in this title whether the applicant has accomplished the purposes for which continued or not.

d. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

6. . Planning Board Review and Decision – Final Plan Conditions of Approval.

1. ???????

a. Conditions – General. Conditions of the Planning Board's approval may include, but are not limited to, type of vegetation, increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of piers, docks, parking or signs, type or style of construction, and , the amount of all guarantees which may be required.

b. Performance Guaranty

(1) Where improvements for the common use of lessees or the general public have been approved, the Planning Board must require a performance guaranty of amount sufficient to pay for said improvements as a part of the agreement.

(2) Process. Before the Planning Board grants approval of a final plan, the applicant must, in an amount and form acceptable to the town manager, file with the municipal treasurer an instrument to cover the full cost of the required improvements. A period of one year (or such other period as the planning board may determine appropriate, not to exceed three years) is the guaranty time

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within which required improvements must be completed. The performance guaranty must include an amount required for recreation land or improvements as specified.

c. The Planning Board must instruct the code enforcement officer not to issue an occupancy permit until all conditions of the agreement have been satisfied.

d. Conditions required by the Planning Board at the final plan review phase must have been met before the final plan may be given final approval unless so specified in the condition or specifically waived, upon written request by the applicant, by formal Planning Board action wherein the character and extent of such waivers which may have been requested are such that they may be waived without jeopardy to the public health, safety and general welfare.

e. The decision of the planning board plus any conditions must be noted on three copies of the final plan recorded at the York County Registry of Deeds. One copy must be returned to the applicant, one retained by the Planning Board and one forwarded to the municipal officials.

f. Flood Avoidance Condition. If a structure is located within a flood area, the proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation;

g. Phasing Plan. The Planning Board may permit phasing of a plan where it can be demonstrated to the Planning Board's satisfaction such phasing would result in a safe and orderly implementation of the Plan.

(1). Phasing is subject to any conditions deemed necessary to assure that a reasonable mixture of uses is completed within each separate phase of the plan.

(2) Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.

(3)????

(4) The Planning Board may permit construction of phases "out of order" only when the storm drainage plan and the water plan, etc. have been reviewed and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

7. Final Plan Approval.

a. Official Approval. After considering all submissions, evidence and testimony in accordance with the requirements of all applicable state and municipal codes, the planning board must make a finding of facts for each and every proposed phase of development, including the development master plan and each subsequent development plan, and take formal action as required in this title.

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15280

15281 b. Agreement Form. An approval by the Planning Board must take the form of an agreement  
15282 between the town and the applicant, incorporating as elements the application, the Planning  
15283 Board's findings of fact, and such conditions as the Planning Board may impose upon approval.

15284

15285 c. Agreement Distribution. The Planning Board must send copies of the agreement to the town  
15286 manager and code enforcement officer.

15287

15288 d. Finding of Fact. General

15289 Action by the Planning Board must be based upon findings of fact which certify or waive  
15290 compliance with all the required standards of this title, and which certify the development satisfies  
15291 the following requirements:

15292

15293 (1) Local Ordinances and Plans Conformity. The proposed development conforms with a duly  
15294 adopted comprehensive plan as per adopted provisions in the Town code, zoning ordinance,  
15295 subdivision regulation or ordinance, development plan or land use plan, if any. In making this  
15296 determination, the municipal reviewing authority may interpret these ordinances and plans;

15297

15298 (2) Freshwater Wetlands Identified. All freshwater wetlands within the project area have been  
15299 identified on any maps submitted as part of the application, regardless of the size of these  
15300 wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and  
15301 water conservation district;

15302

15303 (3) River, Stream or Brook Identified. Any river, stream or brook within or abutting the proposed  
15304 project area has been identified on any maps submitted as part of the application. For purposes of  
15305 this section, "river, stream or brook" has the same meaning as in MRS Title 38, Section 480-B,  
15306 Subsection 9;

15307

15308 (4) Water Sufficiency. The proposed development has sufficient water available for the  
15309 reasonably foreseeable needs of the development;

15310 (5) Municipal Water Supply Ability. The proposed development will not cause an unreasonable  
15311 burden on an existing water supply, if one is to be used;

15312

15313 (6).Sewage Disposal Adequacy. The proposed development will provide for adequate sewage  
15314 waste disposal and will not cause an unreasonable burden on municipal services if they are  
15315 utilized;

15316

15317 (7. Municipal Solid Waste Disposal Ability. The proposed development will not cause an  
15318 unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services  
15319 are to be utilized;

15320

15321 (8) Water Body Quality and Shoreline Protected. . Whenever situated entirely or partially within  
15322 two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the  
15323 quality of that body of water or unreasonably affect the shoreline of that body of water;

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(9) Groundwater Protected. The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;

(10) Flood Areas Identified and Development Conditioned. All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation;

(11) Stormwater Managed. The proposed development will provide for adequate stormwater management;

(12) Erosion Controlled. The proposed development will not cause an unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

(13) Traffic Managed. The proposed development will:  
i. not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed;  
ii. provide adequate traffic circulation, both on-site and off-site;

(14) Water and Air Pollution Minimized. The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:

- i. The elevation of the land above sea level and its relation to the floodplains;
- ii. The nature of soils and sub-soils and their ability to adequately support waste disposal;
- iii. The slope of the land and its effect on effluents;
- iv. The availability of streams for disposal of effluents;
- v. The applicable state and local health and water resource rules and regulations; and
- vi. The safe transportation, disposal and storage of hazardous materials;

(15) Aesthetic, Cultural and Natural Values Protected. The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

(16). capacity to meet the standards of this section;

(17) In Wireless Communication System Facility (WCSF) development, the WCSF :



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- a. Tower or other structure height does not exceed that which is essential for its intended use and public safety;
- b. Proximity of tower to residential development or zones is acceptable;
- c. Nature of uses on adjacent and nearby properties is compatible;
- d. Surrounding topography is protected;
- e. Surrounding tree coverage and foliage is protected;
- f. Design of the tower, antenna, or facility with particular reference to design characteristics effectively eliminating or significantly reducing visual obtrusiveness is minimized;
- g. Proposed ingress and egress to the site is adequate;
- h. co-location with another existing WCSF has been thoroughly pursued and is not feasible;
- i. Visual impacts on view sheds, ridgelines, and other impacts caused by tower location, tree and foliage clearing and placement of structures, and associated development is minimized;
- j. will not unreasonably interfere with the view of or from any public park, natural scenic vista, and historic building or major view corridor and the Kittery waterfront and harbor;
- k. is not constructed in such a manner as to result in needless height, mass, and guy-wire supports, with documentation having been provided and reviewed regarding the design capacity and/or the remaining co-location capacity of the tower/facility;
- l. “Stealth” technology has been pursued and is not a viable option.

(18) In a Shoreland, Resource Protection or Commercial Fisheries/.Maritime Use Overlay Zone, the proposed use will:

- i. maintain safe and healthful conditions;
- ii. not result in water pollution, erosion or sedimentation to surface waters;
- iii. adequately provide for the disposal of all wastewater;
- iv. not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- v. conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- vi. protect archaeological and historic resources as designated in the comprehensive plan;
- vii. not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;
- viii. avoid problems associated with floodplain development and use; and
- ix. is in conformance with the provisions of this title.

(19) For a Right of Way Plan, the proposed ROW:

- a. does not create any nonconforming lots or buildings; and
- b. could reasonably permit the right of passage for an automobile;

8. Post Approval Actions Required.

- a. Plan Revisions after Approval. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan, unless in accordance with the planner’s and CEO’s powers and duties as found in Chapter 16.16, or unless the plan has been resubmitted and the Planning Board specifically approves such modifications. In the event a final plan is recorded

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without complying with this requirement, the same is null and void, and the Planning Board must institute proceedings to have the plan stricken from town records and the York County registry of deeds.

b. A plan has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the chair only, if so voted by the Planning Board.

c. The development master plan and each subsequent development plan thereof has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the chair only, if so voted by the Planning Board.

d. Approval Not Acceptance of Property. The approval by the Planning Board of a plan, a development master plan or any other subsequent development plan does not constitute, nor is it evidence of any acceptance by the municipality of any street, easement, or other open space shown on the plan. When a park, playground, or other recreation area is shown on the plan, approval of the plan does not constitute an acceptance by the municipality of such areas. The Planning Board must require the plan to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the municipal officials covering future deed and title, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such recreation area.

P. Approved Final Subdivision Plan.

1. An approved subdivision plan must be filed with the York County registry of deeds within ninety (90) days from date of such approval. Any plan not so filed and recorded is null and void, unless particular circumstances dictate and upon petition, the board grants an extension which may not exceed two additional ninety (90) day periods.

2. Where applicable, a Stormwater and Erosion Control Maintenance Agreement must be included in the Document of Covenants, Homeowners Documents and/or as riders to the individual deed and recorded with the York County Registry of Deeds.

Q. Approved Plan Expiration.

1. A subdivision plan's approval by the Planning Board will expire if work on the development has not commenced within one year or is not substantially complete within three years from the date of board approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed ten (10) years.

2. A non-subdivision plan's approval by the Planning Board will expire if work on the development is not commenced within one year or substantially complete within two years from the date of Planning Board approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed three years.

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S. Requests for Extension. The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis.

**16.9.4.6Field changes**

If at any time before or during the construction of the required improvements, it appears to be necessary or desirable to modify the required improvements, the inspecting official is authorized to approve minor modifications due to unforeseen circumstances, such as encountering hidden outcrops of bedrock, natural springs, etc. The inspecting official, and Town Planner, shall issue any approval under this subsection in writing and transmit a copy of the approval to the Planning Board. Revised plans must be filed with the town. For major modifications, such as relocations of rights-of-way, property boundaries, changes of grade by more than 1%, etc. the developer must obtain permission to modify the plan from the Planning Board.

**Article V. Shoreland Development Review**

**16.9.5.1General**

A. Permits Required. After the effective date of the Ordinance codified in this section no person may, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the zone in which such activity or use would occur, or expand, change or replace an existing use or structure, or renew a discontinued nonconforming use.

When replacing an existing culvert, the watercourse must be protected so that the crossing does not block fish passage, and adequate erosion control measures must be taken to prevent sedimentation of the water in the watercourse.

A permit is not required for the replacement of an existing road culvert provided the replacement culvert is:

- a. not more than one standard culvert size larger in diameter than the culvert being replaced,
- b. not more than twenty-five (25) percent longer than the culvert being replaced, and
- c. not longer than seventy-five (75) feet.

A permit is not required for an archaeological excavation provided the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

Any permit required by this Ordinance is in addition to any other permit required by other law or ordinance.

B. Permit Application.

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1. Every applicant for a permit must complete and submit a Kittery application form and a site plan drawn to scale, to the appropriate official as indicated in Table 16.34.090.

2. All applications must be signed by the owner, owners or lessee of the property or other person authorizing the work, certifying that the information in the application is complete and correct. If the person signing the application is not the owner or lessee of the property then that person must submit a letter of authorization from the owner or lessee.

3. All applications must be dated, and the Code Enforcement Officer, Town Planner, Town Clerk or Kittery Port Authority, as appropriate, must note upon each application the date and time of its receipt by each.

4. Whenever the nature of the proposed structure requires the installation of a subsurface sewage disposal system, a completed application for a subsurface wastewater disposal permit must be submitted. The application must include a site evaluation approved by the Plumbing Inspector.

C. Procedure for Administering Permits. Within thirty five (35) days of the receipt of a written application, the Planning Board or Code Enforcement Officer, as indicated in Table 16.34.090, must notify the applicant in writing that the application is or is not complete. If the application is incomplete, the written notification must specify the additional material required to complete the application.

1. The Code Enforcement Officer is required to approve, approve with conditions or deny all permit applications in writing within thirty-five (35) days of receiving a completed application.

2. If the Planning Board has a waiting list of applications, a decision on the application will occur within thirty-five (35) days after the first available date on the Planning Board's agenda following receipt of the completed application, or within thirty-five (35) days of the public hearing, if one is held.

3. Permits will be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this section.

The applicant is required to demonstrate, to the satisfaction of the reviewing authority, that the proposed land use activity is in conformance with the purposes and provisions of this ordinance Code.

4. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated that the proposed use will:

i. maintain safe and healthful conditions;

ii. not result in water pollution, erosion or sedimentation to surface waters;

iii. adequately provide for the disposal of all wastewater;

iv. not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

v. conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

vi. protect archaeological and historic resources;

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vii. not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/  
maritime activities district;  
viii. avoid problems associated with floodplain development and use; and  
ix. is in conformance with the provisions of this title.  
and recorded with the York County Registry of Deeds.

**Chapter 16.3710**

**MARINE-RELATED DEVELOPMENT APPLICATION AND REVIEW**

**Sections:**

**~~16.37.010~~ Application.**

**~~16.37.020~~ Zoning board of appeals/planning board review.**

**16.37.01010.1 Authority and ScopeApplication.**

A. Kittery Port Authority approval extends from the navigable water body to the mean high water line or upland edge of a coastal wetland.

B. The Port Authority may approve, for convenience of access to a pier from land upland of the mean high water line or the edge of a coastal wetland, an extension of the pier that is the shortest practicable extension at its nominal height and width.

C. Only one pier, ramp and float structure is permitted on any noncommercial or non-industrial lot.

D. Only functionally water-dependent uses are allowed on, over, or abutting a pier, wharf, dock or other structure beyond the normal high-water line.

E. All other structures upland of, and abutting or built on or over a structure extending into a water body beyond the mean high water line or the edge of a coastal wetland require Planning Board approval.

F. Where the Planning Board must review and approve a development plan involving a pier, ramp, flotation system or principal marine structure, prior to Planning Board approval, the Kittery Port Authority must comment on the plan's conformance with Kittery Port Authority rules and regulations and navigational aspects of any proposed pier, ramp and float system or principal marine structure.

**16.37.02010.2 Application**

A. Applicants for marine-related structures to be located in the town of Kittery are required to file with the Kittery town planner an official town of Kittery port authority application as prescribed in the town of Kittery application process for piers, docks, wharves, landings, floats, bridges, and other water-dependent structures or uses. The original application will be given to the port authority by the planner for processing. The town planner in consultation with the CEO will review the application for compliance with this title and issue a written record of findings and the CEO's determination. The town planner will determine whether the planning board review is required. Applications for piers, docks, wharves, landings, floats, bridges, and other water-dependent structures or uses are available online and in the Kittery Planning and Code Enforcement Offices. The completed application, including all supportive documentation, must be submitted to the Town

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Planner. The Town Planner in consultation with the Code Enforcement Officer will review the application for compliance with this Title and issue a written record of findings. The Town Planner will determine whether the Planning Board review is required. If Planning Board review is not required the Town Planner will forward the application to the Kittery Port Authority for processing.

B. Permits/leases/approvals are required for marine-related structures, including the following:

- 1.Kittery Port Authority approval;
- 2.Maine State Department of Environmental Protection permit;
- 3.Army Corps of Engineers permit;
- 4.Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator;
- 5.Kittery Building permit.

**16.37.03010.3 Zoning board of appeals/planning board review.Planning Board /Board of Appeals Review.**

~~A. Where a special exception or appeal is necessary as an integral part of a development review process, zoning board of appeals action shall be encouraged prior to KPA review. The findings of the zoning board of appeals as well as any file material shall be made available to the KPA.~~

~~B. Where the town planner determines a project contains significant upland development as an integral part of the application, review by the ZBA or planning board as appropriate is encouraged prior to port authority review as indicated in Chapter 16.24 (Order of Review) of the Kittery land use and development code. (Ord. 14-06 (part))~~

A. Prior to Kittery Port Authority review, the Planning Board or Board of Appeals, as provided herein, must hear and make a determination of Special Exceptions and/or appeals necessary as an integral part of the proposed development. The Town Planner must transmit copies of Planning Board decisions and the Code Enforcement Officer must transmit copies of Board of Appeals decisions and all documentation constituting the record of the decision for marine-related development to the Kittery Port Authority.

B. Prior to Kittery Port Authority review, as indicated in Chapter 16.24, where the Town Planner determines a project contains significant upland development as an integral part of the application, review by the Planning Board or Board of Appeals as appropriate is required.C. Applications for piers, docks, wharves, marinas and other uses projecting into water bodies must be submitted to the Town Planner for determination of completeness and verification of compliance to this section. See Section 16.34.220.B. paragraphs 1 through 3. The application must include copies as required by the Town Planner of each document submitted. The Town Planner will review the application and prepare a written response for Port Authority use. Applications the Town Planner confirms are complete and meet minimum Code requirements will be forwarded the Port Authority for review.

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The Port Authority will notify the applicant and the Code Enforcement Officer in writing of the granting of, or denial of, the applicant's request. Prior to the commencement of construction on any pier, dock, wharf, marina or any other proposed use that projects into a water body, the owner and/or developer must apply for, and acquire a building permit from the Code Enforcement Officer.

D. Standards. In accordance with 38 M.R.S., §435 through 449, all dimensional and other standards (excluding setbacks from water bodies) of this Code apply to structures and uses projecting into a water body beyond the normal high-water mark.

Boathouses, while convenient to locate near the water, are not considered functionally water-dependent uses and must meet the same setback requirement as principal structures. The State of Maine no longer issues permits for construction of boathouses below the normal high water line due to the adverse environmental impact; therefore new boathouses must be located on uplands. In addition, the following standards apply:

1. Access from shore must be developed on soils appropriate for such use and constructed so as to control erosion.
2. The location must not interfere with existing developed recreational and maritime commerce or natural beach areas.
3. The facility must be located so as to minimize adverse effects on fisheries.
4. The facility must be a water-dependent use and no larger in dimension than necessary to carry on the activity and must be consistent with existing conditions, use and character of the area.
5. No new structure may be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
6. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland may be converted to residential dwelling units in any district.
7. Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland must not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.
8. Applicants proposing any construction or fill activities in a waterway or wetland requiring approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine Protection, Research and Sanctuaries Act, must submit proof of a valid permit issued.
9. Applicants proposing any permanent structures projecting into or over water bodies must submit proof of a valid permit issued from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S., §480C.
10. A residential lot with an accessory use pier, ramp and float system with a float system area exceeding two hundred (200) square feet must have one off-street parking space for each one hundred (100) square feet of float area.
11. Proposals for any principal marine structure use, any residential joint and/or shared-use pier, or any residential development use pier (See 16.34.120.L below) requires Planning Board approval.

a. The shorefront development site plan must include the following:

- i. location of parking space(s) required by this Chapter;

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- 15672 ii. a map showing the location of the lots that would have use of the pier, ramp and float system;  
15673 iii. rights granted for access to the pier, ramp and float system or to any water-dependent  
15674 structure; public and private access paths;  
15675 iv. the construction of piers, ramps and floats;  
15676 v. storage of boats and/or floats;  
15677 vi. clearing of vegetation;  
15678 vii. visual impact and controls to assure continuing conformance to the plan; and  
15679 viii. other details requested by the Planning Board or Kittery Port Authority.  
15680 12. A residential development containing five (5) or more lots in a zone permitting a residential  
15681 development use pier may construct only one residential development use pier.  
15682 13. Commercial development of shorefront must provide for access by the general public as part  
15683 of the shorefront development plan.